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Rules and Regulations

Federal Register
Vol. 56, No. 166
Tuesday, August 27, 1991

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[DA-91-007]

Milk in the Texas Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues for the months of August 1991 through July 1992, the suspension of segments of the pool plant and producer milk definitions of the Texas order. Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market, requested the continuation of the suspension. This action is warranted because it has been demonstrated that the market conditions that resulted in granting the current suspension still exist.

EFFECTIVE DATE: August 27, 1991.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of proposed suspension: Issued July 10, 1991; published July 15, 1991 (56 FR 32131).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on July 15, 1991 (56 FR 32131) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Mid-America Dairymen, Inc. provided further evidence in support of the suspension. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1991 through July 1992 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

5. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

Statement of Consideration

This action continues the current suspension of segments of the pool plant and producer milk definitions of the Texas order. This suspension would be in effect from August 1991 through July 1992. Specifically, this action continues the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at pool distributing and supply plants during the month. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This action continues to inactivate the 60 percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the

diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants This action continues the current suspension of these performance standards for an additional twelve months for August 1991 through July 1992 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. This action continues to suspend these requirements.

The continuation of the current suspension was requested by Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., cooperative associations that represent a substantial share of the dairy farmers who supply the Texas market. The cooperatives supplied evidence based upon the Milk Market Administrators' reports. This evidence established that continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. The suspension also continues to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers supplying the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action will eliminate the inefficient movements of milk and that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from pooling.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

It is therefore ordered, That the following provisions of the Texas marketing order are hereby suspended for August 1991 through July 1992.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1126.7 [Temporarily Suspended in Part]

1. Temporarily suspended in part in § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. Temporarily suspended in part in § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

§ 1126.13 [Temporarily Suspended in Part]

3. Temporarily suspended in part in § 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. Temporarily suspended in part in § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

5. Temporarily suspended in part in § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

Signed at Washington, DC, on: August 21, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–20503 Filed 8–26–91; 8:45 am]

BILLING CODE 3410-02-M

Foreign Agricultural Service

7 CFR Part 1570

Export Bonus Programs

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Foreign Agricultural Service (FAS) is issuing this interim rule which sets forth in subpart A the criteria considered in evaluating and approving proposals for country initiatives under the Sunflowerseed Oil Assistance Program (SOAP) and the Cottonseed Oil Assistance Program (COAP). Subpart B sets forth the drawback certification requirement applicable to the SOAP and the COAP.

DATES: Interim rule effective August 27, 1991, comments must be submitted on or before October 28, 1991.

ADDRESSES: Comments must be submitted in writing to Philip Mackie, Assistant Administrator, Commodity and Marketing Programs, USDA, FAS, room 5089–S, 1400 Independence Avenue, SW., Washington, DC, 20250–1000, telephone (202) 447–4761. All comments received will be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: For further information regarding the criteria for the SOAP and the COAP, contact Philip Mackie, Assistant Administrator, Commodity and Marketing Programs, USDA, FAS, room 5089–S, 1400 Independence Avenue, SW., Washington, DC, 20250–1000, telephone (202) 447–4761. For further information regarding the drawback certification requirement for the SOAP and the COAP, contact L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503–S, 1400 Independence Avenue, SW.,

Washington, DC., 20250–1000, telephone (202) 447–6211.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "nonmajor." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Sales Manager, Foreign Agricultural Service, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Subpart A of this rule sets forth the criteria used in evaluating and approving proposals for initiatives under the SOAP and the COAP. The purpose of this process is to select eligible countries for SOAP and COAP initiatives which will best meet the programs' objective of encouraging export sales of sunflowerseed and cottonseed oils at competitive prices. This process is neutral with respect to its effect on large and small exporters. Subpart B contains a provision which requires all program participants to submit a drawback certification. Although this does impose a burden on all program participants, including small businesses, this requirement was mandated by an amendment to the Agricultural Trade Act of 1978, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This interim rule has been submitted to the Office of Management and Budget (OMB) for review. No information collection or recordkeeping requirements are associated with the program criteria or drawback certification. A separate interim rule covering general SOAP and COAP operating provisions and all associated information collection requirements will be submitted to OMB for approval under the provisions of 44 U.S.C. chapter XXXV.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

Section 403(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5663(a)(1)), as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (hereinafter referred to as the 1990 Act), which became law on November 28, 1990, requires the Secretary of Agriculture to "specify by regulation the criteria used to evaluate and approve proposals" for each commercial export program. This would include the SOAP and the COAP, and the criteria for these programs are hereby set forth in subpart A of 7 CFR part 1570. The SOAP and the COAP are administered by the Foreign Agricultural Service (FAS), in conjunction with the Agricultural Stabilization and Conservation Service (ASCS).

Section 416(b) of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act, provides that "[a] person shall be ineligible for participation in [an export program carried out with funds made available pursuant to section 32 of the Act entitled 'An Act to amend the Agricultural Adjustment Act, and for other purposes', approved August 24, 1935 (7 U.S.C. 612c)] . . . with respect to the export of vegetable oil or a vegetable oil product that has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, of any duty, tax, or fee imposed under Federal law on an imported commodity or product." 7 U.S.C. 5676(b). The SOAP and the COAP are programs carried out with funds made available pursuant to section 32 of the Act approved on August 24, 1935 and, therefore, this statutory provision applies to these programs. Accordingly, subpart B of 7 CFR part 1570 contains a provision requiring exporters to include a drawback certification with an offer for an export bonus under the SOAP or the COAP.

This is being issued as an interim rule because section 404 of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act, requires that "[n]ot later than 180 days after the date of enactment of this Act [November 28, 1990], the Secretary shall issue regulations implementing the provisions of this Act." 7 U.S.C. 5664. The SOAP and the COAP are programs currently being operated by FAS and this interim rule is generally consistent with current policies and operational procedures for the programs.

List of Subjects in 7 CFR Part 1570

Agricultural commodities, Exports, Foreign trade, International trade.

Accordingly, 7 CFR chapter XV is amended by adding a new part 1570 to read as follows:

PART 1570—EXPORT BONUS PROGRAMS

Subpart A—Sunflowerseed Oil Assistance Program and Cottonseed Oil Assistance Program Criteria

Subpart B—SOAP and COAP Drawback Certification

Subpart A—Sunflowerseed Oil Assistance Program and Cottonseed Oil Assistance Program Criteria

Authority: 7 U.S.C. 5663.

§ 1570.10 General Statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Sunflowerseed Oil Assistance Program (SOAP) and Cottonseed Oil Assistance Program (COAP) administered by the Foreign Agricultural Service (FAS). These criteria are interrelated and will be considered together in order to select eligible countries for SOAP and COAP initiatives which will best meet the programs' objective. The objective of the programs is to encourage the sale of additional quantities of sunflowerseed oil and cottonseed oil in world markets at competitive prices. Under the SOAP and the COAP, bonuses are made available by FAS to enable exporters to meet prevailing world prices for sunflowerseed oil and cottonseed oil in targeted destinations. In the operation of the SOAP and the COAP, FAS will make reasonable efforts to avoid the displacement of usual marketings of U.S. agricultural commodities.

§ 1570.20 Criteria.

The criteria considered by FAS in reviewing proposals for SOAP and COAP initiatives will include, but not be limited to, the following:

(a) The expected contribution which initiatives will make toward realizing U.S. agricultural export goals and, in particular, in developing, expanding, or

maintaining markets for U.S. sunflowerseed and/or cottonseed oil;

(b) The subsidy requirements of proposed initiatives in relation to the sums made available to operate the programs in any given fiscal year; and

(c) The likelihood that sales facilitated by initiatives would have the unintended effect of displacing normal commercial sales of sunflowerseed and/or cottonseed oil.

Subpart B—SOAP and COAP Drawback Certification

Authority: 7 U.S.C. 5676.

§ 1570.1100 Drawback Certification.

An offer submitted by an exporter to FAS for an export bonus under the SOAP or the COAP must contain, in addition to any other information required by FAS, a certification stating the following: "None of the eligible commodity (sunflowerseed oil and/or cottonseed oil) has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) of any duty, tax, or fee imposed under Federal law on an imported commodity or product." This certification must be signed by the exporter, if the exporter is an individual, or by a partner or officer of the exporter, if the exporter is a partnership or a corporation, respectively. FAS will reject any offer that does not contain the prescribed certification.

Signed this 16th day of August, 1991 at Washington, DC.

F. Paul Dickerson,

General Sales Manager, Foreign Agricultural Service.

[FR Doc. 91-20403 Filed 8-26-91; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-16-AD; Amdt. 39-8022; AD 91-18-19]

Airworthiness Directives; Beech 33, 35, 36, 55, 58, and 95 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Beech 33, 35, 36, 55, 58, and 95 series airplanes. This action requires a one-time inspection of the pilot and copilot shoulder harnesses and the mandatory replacement of all washers that are not made of steel and do not meet a certain diameter and thickness. Improper washers may have been installed in the pilot and copilot shoulder harness "D" ring of the affected airplanes. The actions specified by this AD are intended to prevent a malfunctioning shoulder harness that could result in occupant injury during an emergency situation.

DATES: Effective October 21, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1991.

ADDRESSES: Beech Service Bulletin No. 2394, dated December 1990, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This service information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 33, 35, 36, 55, 58, and 95 series airplanes was published in the **Federal Register** on May 14, 1991 (56 FR 22124). The action proposed a one-time inspection of the pilot and copilot shoulder harnesses and the mandatory replacement of all washers that are not made of steel and do not meet a certain diameter and thickness in accordance with the instructions in Beech Service Bulletin (SB) No. 2394, dated December 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter states that the compliance time of 100 hours time-in-service (TIS) is different than Beech SB No. 2394, which specifies 25 hours TIS. The commenter believes that the consequences of a malfunctioning shoulder harness warrants the 25-hour TIS compliance time. The FAA does not concur. The FAA has analyzed this situation and determined that it is not an emergency and does not involve immediate flight safety. The proposed compliance time of 100 hours TIS will provide the operator/owner time to comply with this AD action.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 5,800 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $5 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $667,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-18-19 Beech: Amendment 39-8022; Docket No. 91-CE-16-AD. Applicability: The following model airplanes, certificated in any category:

Models	Serial Numbers
F33A	CE-634 through CE-1536.
V35B	D-9862 through D-10403.
A36	E-825 through E-2578.
B36TC	EA-1 through EA-509.
95-B55, 95-B55A	TC-1947 through TC-2456.
E55, E55A	TE-1078 through TE-1201.
58, 58A	TH-733 through TH-1609.
58P, 58PA	TJ-3 through TJ-497.
58TC, 58TCA	TK-1 through TK-151.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent malfunctioning pilot and copilot shoulder harnesses that could result in occupant injury during an emergency situation, accomplish the following:

(a) Inspect the washers on the "D" ring of the pilot and copilot shoulder harnesses in accordance with the instructions of Beech Service Bulletin (SB) No. 2394, dated December 1990.

(b) If the washers installed on the "D" ring do not meet the criteria in the instructions of Beech SB No. 2394, dated December 1990, prior to further flight, replace the washers with part number 100951X060YA.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(e) The inspections and possible replacements required by this AD shall be done in accordance with Beech Service Bulletin No. 2394, dated December 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.: room 8401, Washington, DC.

This amendment becomes effective on October 21, 1991.

Issued in Kansas City, Missouri, on August 8, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-20499 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-264-AD; Amdt. 39-8020; AD 91-18-17]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires the inspection and modification or replacement of certain passenger door disarm cables. This amendment is prompted by in-service reports of broken cables. This condition, if not corrected, is a hazard to personnel who may open an affected armed door from the outside.

EFFECTIVE DATE: September 30, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terrell W. Rees, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2785. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires the inspection and modification or replacement of certain passenger door disarm cables, was published in the Federal Register on February 11, 1991 (56 FR 5368).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, expressing the concerns of several operators, responded that the proposed 30-day compliance time was too short, and recommended 180 days instead. As justification for this recommendation, the commenter noted that: additional rework instructions (i.e., a revision to the service bulletin) for the swaged ball assemblies were expected to be released soon from Boeing, which might also require previously accomplished tasks to be reworked; the proposed 30-day compliance time did not allow for cost-effective maintenance scheduling; and, since maintenance personnel were the only individuals subject to the hazard identified in this AD, their exposure could be reduced by training and the implementation of certain early door disarm procedures.

The FAA concurs in part with the commenter's request. In consideration of the data presented by the commenter with respect to operators' experiences in attempting to implement the instructions specified in the service bulletin that was cited in the Notice, and the delays incurred while awaiting the necessary additional rework instructions from the manufacturer, the FAA concurs that an extension of the compliance time is warranted. Accordingly, the final rule has been revised to extend the compliance time to 90 days; the FAA has determined that this extension will not significantly compromise safety.

Since issuance of the Notice, the FAA has reviewed and approved Revision 1 to Boeing Service Bulletin 757-52-0052, dated June 20, 1991. This revision includes revised procedures for accomplishing the required inspection, replacement, and modification; the revised procedures largely enhance and facilitate the successful accomplishment of these actions, without adding any further substantive operations. Accordingly, the FAA has revised the final rule to require the inspection and necessary rework of the passenger door disarm cables in accordance with Revision 1 of this Boeing service bulletin. Operators who have previously accomplished the requirements in accordance with the original issue of the service bulletin will be considered to have complied with this AD.

With regard to the addressed hazard, however, the FAA considers that the unsafe condition is a potential hazard not only to maintenance personnel, but to gate agents and rescue personnel, as well. Further, although exposure could possibly be reduced by more training (or, retraining) of involved personnel, the

FAA considers that a more effective method of eliminating this safety problem is to place less emphasis on special procedures and more emphasis on positive design improvements. The requirements of this AD action are in consonance with that policy decision.

One commenter suggested that the manpower estimates specified in the economic impact paragraph of the preamble to the Notice were too optimistic, and implied that the estimated figures should be increased. The commenter presented no additional data, however, that would indicate the estimates were incorrect. The FAA does not concur that a change is warranted. The FAA has consulted with the manufacturer, who confirmed that the original estimates are correct.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraphs, below, have been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 275 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 143 airplanes of U.S. registry will be affected by this AD. In the unlikely worst-case scenario in which inspections reveal that all cables must be replaced, it will take approximately 39 manhours per airplane to accomplish the required actions, at an average labor cost of $55 per manhour. The cost of required parts under these circumstances will be $7,200 per airplane ($1,200/door×6 doors). Based on these figures, the maximum total cost impact of the AD on U.S. operators will be $1,336,335.

It is estimated, however, that no more than five percent of the disarm cables at the more heavily utilized doors will require replacement. Therefore, the more likely estimated total cost impact of the AD on U.S. operators is estimated to be $66,817.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–18–17. Boeing: Amendment 39–8020. Docket No. 90–NM–264–AD.

Applicability: Model 757 series airplanes, as listed in Boeing Service Bulletin 757–52–0052, Revision 1, dated June 20, 1991, certificated in any category.

Compliance: Required within the next 90 days after the effective date of this AD, unless previously accomplished.

To prevent the hazard of an unexpectedly powered door opening and escape slide deployment when ground personnel open from the outside an armed passenger door with a broken disarm cable, accomplish the following:

A. For passenger doors 1, left and right, and 2, left and right: Measure the clearance between the lower end of the disarm cable and the pin in the disarm lever, in accordance with Boeing Service Bulletin 757–52–0052, Revision 1, dated June 20, 1991.

1. If the clearance between the end of the cable and the pin is less than 0.010 inch, prior to further flight, inspect the cable for damage or breakage.

a. If the cable is damaged or broken, prior to further flight, replace the cable in accordance with the service bulletin.

b. If the cable is not damaged or broken, grind the cable end and/or swaged ball and reinstall the cable into the door in accordance with the service bulletin.

2. If the clearance is 0.010 inch or more, no modification or replacement is required.

3. Functionally test the door in accordance with the service bulletin.

B. For passenger doors 4, left and right: Disconnect the disarm cable from the disarm lever on the door handle box, and inspect the cable for damage or breakage in accordance with the service bulletin.

1. Prior to further flight, replace any damaged or broken cable in accordance with the service bulletin.

2. For any cable that is not damaged or broken, grind the cable end and/or swaged ball and reinstall the cable into the door, in accordance with the service bulletin.

3. Functionally test the door in accordance with the service bulletin.

C. For airplanes on which the requirements of paragraph A. or B. of this AD were accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 757–52–0052, dated August 30, 1990, no further action is necessary.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39–8020, AD 91–18–17) becomes effective September 30, 1991.

Issued in Renton, Washington, on August 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–20500 Filed 8–26–91; 8:45 am]

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14 CFR Part 39

[Docket No. 91-NM-172-AD; Amdt 39-8023; AD 80-12-07 R2]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Fokker Model F-27 series airplanes, which currently requires inspections, replacements, and modifications of certain components on Fokker Model F-27 series airplanes as necessary to prevent unsafe conditions. This amendment provides a means for obtaining approval of alternative methods of compliance. This amendment is prompted by an operator's request to use an alternative method of compliance to meet a requirement in the existing AD.

EFFECTIVE DATE: September 10, 1991.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam; telephone (206) 227-2145.

Mailing address: 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On July 15, 1980, the FAA issued AD 80-12-07 R1, Amendment 39-3855, to require inspections, replacement, and modification of certain components on Fokker Model F-27 series airplanes as necessary to prevent a number of identified unsafe conditions.

Since issuance of that AD, the FAA has received a request from an operator for approval to use an alternative method of compliance to meet a specific requirement in the AD. A provision for obtaining such approvals was not included in the existing AD, as opposed to the FAA's current practice. The FAA has determined that such provisions should be available to operators affected by the existing AD.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the United States, this amendment revises AD 80-12-07 R1 to include means for obtaining approvals for alternative methods of compliance with existing requirements.

Such means have been subject to public notice and comment procedures for a number of years and, thus, have been promulgated in several hundred AD final rules without substantive change from the basic provision. Therefore, it is found that notice and public procedure are unnecessary. Furthermore, this amendment is necessary to incorporate the provision to address an outstanding request for an alternative method approval, as described above. Therefore, it is found that notice and public procedure are impracticable. In addition, because this amendment recognizes the means of obtaining approvals for methods of compliance as alternatives to existing methods, the amendment may be made effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is not considered to be a major regulation under Executive Order 12291. Furthermore, Executive Order 12291 directs that alternative approaches to a regulatory objective be considered; this amendment revises the existing rule to allow for recognition of alternative methods of compliance. Accordingly, this amendment accomplishes a core purpose of the Executive Order. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising Amendment 39-3855, AD 80-12-07 R1, as follows:

80-12-07 R2. Fokker: Amendment 39-8023. Docket No. 91-NM-172-AD. Revises AD 80-12-07 R1.

Applicability: Model F-27 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the unsafe conditions identified below, accomplish the following:

(a) Within the next 100 hours time-in-service after August 7, 1980 (the effective date of AD 80-12-07 R1), except as specifically provided in paragraphs (a)(40), (a)(43), and (a)(53) of this AD, accomplish the following:

(1) Applies to airplanes S/N 10105 through 10110. To prevent jamming of the nose landing gear in the retracted position due to leakage of the shock absorber, install cam P/N 27.1-5101-001-162, at Station 1400 in accordance with the Accomplishment Instructions of Fokker F-27 Modification No. 72, dated April 22, 1959.

(2) Applies to airplanes S/N 10105 through 10108. To prevent partial loss of electrical power capacity in flight due to inadequate attachment of bus bars on panels 1, 2, and 3, modify the bus bar attachment in accordance with the Accomplishment Instructions of Fokker F-27 Modification No. 71, Issue 2, dated September 30, 1959.

(3) Applies to airplanes S/N 10105 through 10119, except S/N 10115. To prevent failure of the nose gear steering system due to trapped air in the steering motor, install by-pass lines with non-return valves over the nosewheel steering circuit follow-up valve in accordance with Fokker Modification No. 86, Issue 2, dated September 14, 1959.

(4) Applies to airplanes S/N 10105 through 10110. To prevent loss of electrical DC generator power in flight as a consequence of a single failure resulting in inadequate grounding of generator master switches, replace the grounding cable serving both switches with two separate grounding cables for the port and starboard generator switches, respectively, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. J-14, Issue 2, dated October 1, 1959.

(5) Applies to airplanes S/N 10105 through 10110 and 10116, 10118 and 10119. To prevent the loss of electrical DC generator power in flight as a consequence of a single failure resulting in inadequate grounding of the generator control panel, install additional grounding provisions for generator control panels in accordance with the

Accomplishment Instructions of Fokker F-27 Service Bulletin No. J-19, Issue 2, dated October 1, 1959.

(6) Applies to airplanes S/N 10111 through 10114 and 10120 through 10122. To prevent jamming of an emergency door as a consequence of the guide rollers springing from the guide plates, enlarge the door rollers and strengthen the guide plates in accordance with Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-22, dated October 21, 1959.

(7) Applies to airplanes S/N 10105 through 10122 and 10126 through 10135. To prevent unsatisfactory operation of the control systems for controlling engine power, elevator and rudder trim tabs, gust lock, emergency shut-off valves, and fuel crossfeed, reinforce the attachment of the control cable guide assemblies in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-23, dated November 30, 1959.

(8) Applies to airplanes S/N 10105 through 10122, 10127 through 10136, 10138, and 10139. To prevent cracks in the elevator main spar web which could affect attachment of the elevator outer hinge, reinforce the elevator main spar at station 3979 in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-26, Issue 3, dated January 27, 1960.

(9) Applies to airplanes S/N 10105 through 10122 and 10126 through 10141. To prevent fatigue failure of engine control levers, install levers of improved design in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. F5, Issue 3, dated May 30, 1960.

(10) Applies to airplanes S/N 10105 through 10122, 10126, 10127, 10131 through 10136, 10138, and 10139. To prevent damage to the flap limit switches due to overtravel, relocate the flap system limit switches in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. C-17, Issue 2, dated February 2, 1960.

(11) Applies to airplanes S/N 10109 through 10122 and 10127 through 10135. To prevent asymmetric extension of wing flaps due to certain failures of the mechanical drive system, modify the flap control system in accordance with the Accomplishment Instructions of Fokker F-27 Modification No. 74, Issue 2, dated March 4, 1960.

(12) Applies to airplanes S/N 10105 through 10122 and 10126 through 10140. To prevent reduced control due to play in pilot and copilot control wheels, modify the control wheel attachment provisions in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. C-18, dated February 3, 1960.

(13) Applies to airplanes S/N 10105 through 10122 and 10126 through 10141. To avoid internal short circuits in electrical connectors, replace the connectors with connectors of improved design in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. J-23, Issue 4, dated February 14, 1961.

(14) Applies to airplanes S/N 10105 through 10122 and 10126 through 10141 with elevators not reinforced in accordance with Fokker F-27 Service Bulletin No. B-76. To prevent failure of elevator hinge brackets which could jeopardize control of the airplane, replace the elevator hinge brackets at Stations 3979 and 2460 in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-28, Issue 2, dated July 13, 1960.

(15) Applies to airplanes S/N 10105 through 10122 and 10126 through 10141, having elevators not reinforced in accordance with Fokker F-27 Service Bulletin No. B-76. To prevent cracks in the elevator main spar web which could affect the elevator center hinge attachment, reinforce the elevator main spar at Station 2460 in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-27, Issue 2, dated July 13, 1960.

(16) Applies to airplanes S/N 10105 through 10122, 10126 through 10141, and 10143 through 10148. To prevent undue vibration stresses in propeller blades which could result in failure of a propeller blade in flight, restrict the engine idling speed to values above 7,000 rpm by revising the dial marking on the rpm indicators in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. N-3, dated April 11, 1960.

(17) Applies to airplanes S/N 10105 through 10148. To prevent failure of aileron hinge brackets, inspect the aileron hinge brackets, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-32, Issue 4, dated January 18, 1961.

(18) Applies to airplanes S/N 10105 through 10122, 10126 through 10141, 10143 through 10148, 10151, and 10153. To prevent a dormant electrical failure which could result in the inability to extend the landing gear following a single failure in the landing gear electrical control circuit, modify the landing gear electrical control circuit in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. J-26, dated July 26, 1960.

(19) Applies to airplanes S/N 10105 through 10122 and 10126 through 10153. To prevent malfunction of the gust lock/engine interference system which possibly could result in takeoff with the flights controls locked, modify the gust lock system in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. F-9, Issue 2, dated November 24, 1960.

(20) Applies to airplanes S/N 10105 through 10179. To prevent blockage of the pitot-static system due to accumulation and freezing of water which could cause erroneous indications of airspeed and altitude, modify the pitot-static system in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. N-7, Issue 2, dated May 19, 1961.

(21) Applies to airplanes S/N 10105 through 10188. To prevent deformation of the H.P.C. control lever rub plate which could impair controllability by preventing feathering of the associated propeller, install a rub plate of improved design in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. F-11, Issue 2, dated November 27, 1961.

(22) Applies to all Fokker F-27 airplanes incorporating Fokker F-27 Service Bulletin No. H-10. To prevent malfunction of the engine water/methanol system due to malfunction of the non-return valve, P/N 27.1-8420-018-001, which could result in power deficiency during takeoff, dismantle and inspect the non-return valves, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. H-24, dated October 29, 1962.

(23) Applies to airplanes S/N 10105 through 10213. To prevent blockage of the pitot-static system due to the accumulation and freezing of water which could cause erroneous indications of airspeed and altitude, modify the pitot-static system in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. N-19, dated December 20, 1962, and Amendment No. 1, dated July 15, 1964.

(24) Applies to airplanes S/N 10145 through 10223. To prevent unwanted propeller auto-feathering in flight due to ingress of moisture in electrical connectors V2609 and V2610, install electrical connectors of improved design in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. J-71, dated May 1, 1963.

(25) Applies to all Fokker F-27 airplanes not incorporating Fokker F-27 Service Bulletin No. G-7. To prevent failure of the propeller feathering system due to malfunction of the H.P.C. switches located on the engine firewall, inspect and test the switches, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. G-5, Issue 2, dated October 8, 1963.

(26) Applies to all Fokker F-27 airplanes not incorporating Fokker F-27 Service Bulletin No. B-146. To detect, arrest, and to prevent possible internal corrosion of the failsafe steel tubular structures of the empennage, the wing flap track support assembly, and the engine mounts, conduct X-ray inspections, and rectify as appropriate, in accordance with Section A, Planning Information, and Section B, Accomplishment Instructions, of Fokker F-27 Service Bulletin No. B-146, dated July 26, 1963, including Amendment No. 1, dated July 30, 1964.

(27) Applies to airplanes up to and including S/N 10240. To prevent damage of flight control rods due to the accumulation of water and consequent corrosion or bursting due to freezing, inspect the flight control rods, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. C-61, Issue 3, dated October 30, 1964, as amended by Amendment No. 1, dated January 20, 1965, and Amendment No. 2, dated November 24, 1966.

(28) Applies to airplanes S/N 10105 through 10253. To prevent failure of the horizontal stabilizer spar web, inspect the front and rear spar areas for cracks and loose rivets between Station 227.5 LH and RH, rectify as appropriate, and apply structural reinforcement in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-150, dated June 18, 1964, and Amendment No. 1, dated January 26, 1965.

(29) Applies to airplanes S/N 10105 through 10274. To prevent fatigue failure of structure supporting the rudder trim tab control brackets which possibly could lead to flutter

of the trim tab, replace bracket, P/N 27.1-3401-026-005, with a new bracket of improved design, and reinforce the bracket supporting structure, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-169, Issue 2, dated June 10, 1965.

(30) Applies to airplanes S/N 10105 through 10274. To prevent fatigue failure of structure supporting the elevator trim tab control brackets which possibly could lead to flutter of the trim tab, replace bracket, P/N 27.1-3201-041-002, with a new bracket of improved design, and reinforce the bracket supporting structure in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. B-170, dated May 31, 1965.

(31) Applies to airplanes S/N 10249 through 10274 incorporating Fokker F-27 Service Bulletin No. I-26. To prevent failure of the brazed high-pressure tube assemblies, PNEU 370 and PNEU 371, of the pneumatic system (which operates the landing gear, brakes, and nose-wheel steering), modify the pneumatic system in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. I-30, dated July 30, 1965.

(32) Applies to airplanes S/N 10105 through 10293. To prevent jamming of nose gear doors due to deterioration of the door seals which has resulted in failure to extend the nose gear, inspect the nose wheel door seals, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 53-67, (B-185), Revision 1, dated August 15, 1967.

(33) Applies to airplanes S/N 10105 through 10316. To prevent possible distortion of the horizontal stabilizer nose section, inspect the nose section for damaged sandwich structure, and the attachment angles on the front stabilizer spar for cracks and correct location, and rectify as appropriate, in accordance with the Accomplishment Instructions, Part II, of Fokker F-27 Service Bulletin No. 55-39, (B-204), Revision 3, dated May 15, 1967.

(34) Applies to all Fokker F-27 airplanes not incorporating Fokker F-27 Service Bulletin No. D-56. To prevent failure of the nose gear lock in the extended position due to failure of the light-alloy actuator piston, replace the light-alloy piston with a new stainless steel piston in accordance with the Accomplishment Instructions of Dunlop Service Bulletin No. 36-95, Revision 1, dated October 21, 1966.

(35) Applies to all Fokker F-27 airplanes not incorporating Dowty Rotol Accessory Gearbox Modification No. GB 2294. To prevent failure of an accessory gearbox due to failure of the input bevel gear which could interrupt electrical and pneumatic power, incorporate an input bevel gear of improved design in accordance with Dowty Rotol Service Bulletin No. 83-291, Revision 2, dated October 1966, or Fokker F-27 Service Bulletin No. 83-12 (E-35), dated May 15, 1967.

(36) Applies to airplanes S/N 10105 through 10264 incorporating Graviner fire extinguisher top caps P/N A126. To prevent malfunction of the engine fire extinguishing systems due to material defects in the top caps, replace top caps, P/N A126, with caps of improved material, identified as P/N A126(2), in accordance with the Embodiment Instructions of Graviner Service Bulletin No. 26-A20, dated September 30, 1964.

(37) Applies to airplanes S/N 10162 through 10355 incorporating a cargo door. To prevent possible failure of the pneumatic system due to inadequate wall thickness of the pneumatic tube located between the main bottle and the pneumatic panel, replace the pneumatic tube, PNEU 341, with a new tube of increased wall thickness, PNEU 428, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 36-23, (I-33), dated October 2, 1967.

(38) Applies to airplanes S/N 10105 through 10350. To prevent failure of an accessory gearbox front mounting flexible link due to misalignment which could result in loss of power, inspect the flexible links of the gearbox front mountings, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 83-14, dated June 24, 1968.

(39) Applies to all Fokker F-27 airplanes with pneumatic systems incorporating Dunlop Dehydrator (bottle P/N ACM 16773), or Dunlop Oil & Watertrap (bottle P/N ACM 16772) manufactured prior to 1959. (Date of manufacture is marked on bottle). To prevent pneumatic system failure due to stress corrosion of pressurized bottles, replace bottles P/N ACM 16772 and P/N ACM 16773, manufactured prior to 1959 with serviceable bottles of the same part number but manufactured in 1959 or subsequent, in accordance with Dunlop Service Bulletin No. 36-187, Revision 3, dated July 27, 1970.

(40) Applies to all Fokker F-27 airplanes. To detect and repair cracks in the rabbet area of fuel tank access doors of the lower outer wing area which possibly could reduce structural strength of the wing, inspect for cracks in the areas of the lower wing skin cut-outs of the fuel tank access doors, and rectify as appropriate, in accordance with the Compliance and Accomplishment Instructions of Fokker F-27 Service Bulletin No. 57-46, Revision 5, dated March 1, 1978.

(41) Applies to all Fokker F-27 airplanes not incorporating Fokker F-27 Service Bulletin No. 55-49. To detect and repair cracks and corrosion in fittings which attach the vertical stabilizer to the fuselage, inspect fittings for cracks and corrosion, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 55-48, Revision 2, dated February 7, 1977.

(42) Applies to all Fokker F-27 airplanes that are equipped with AiResearch aileron trim tab actuator (RH), P/N 525458, 540604-1, or 540604-2-1, but that do not incorporate Fokker F-27 Service Bulletin No. 27-105 or AiResearch Service Bulletin F27/20-12. To prevent malfunction of the RH aileron trim tab actuator due to failure of the actuator setscrew which possibly could reduce the airplane's lateral trim capability, modify the RH aileron trim tab actuator in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 27-105, dated October 19, 1973.

(43) Applies to all Fokker F-27 airplanes. To detect and repair corrosion and cracks in fittings which attach the rear spar of the horizontal stabilizer to the fuselage, inspect fittings for cracks and corrosion and rectify as appropriate, in accordance with the Compliance and Accomplishment Instructions of Fokker F-27 Service Bulletin No. 55-50, dated March 22, 1974.

(44) Applies to airplanes S/N 10446 through 10504 incorporating passenger interior. To prevent unwanted unlatching of the hatrack service panels as the result of a hard landing which could cause consequent possible interference in an emergency evacuation situation, install panel fasteners of improved design in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 25-40, dated August 8, 1974.

(45) Applies to Fokker F-27 airplanes incorporating an engine mount P/N 27.1.6-101-000-403 with a serial number between 590 and 725. To prevent failure of the engine mount due to use of improper material when manufactured, inspect the engine mount upper tubes for cracks adjacent to the welds, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 71-25, Revision 1, dated January 30, 1975.

(46) Applies to airplanes S/N 10105 through 10522. To prevent cable slippage from drum of aileron control due to inadequate flange on aileron cable drum, inspect cable drums, P/N 27.1-5133-002-702, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 27-109, Revision No. 1, dated October 4, 1976.

(47) Applies to airplanes S/N 10105 through 10516 incorporating aileron control rod P/N 27.1-1333-004. To prevent possible disconnection of an aileron control rod from the differential sector due to failure of the control rod bearing, install washers and bearings of improved design in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 27-110, Revision 1, dated February 16, 1976.

(48) Applies to airplanes S/N 10512 and below incorporating the large cargo door. To prevent unwanted opening of the large cargo door in flight due to wear and distortion, inspect the locking and signaling provisions, and rectify as appropriate, in accordance with Part I of the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 52-55, Revision 1, dated December 22, 1975, and reinforce the door stiffening profile in accordance with Part II of that Service Bulletin.

(49) Applies to airplanes S/N 10529, 10534, 10536 through 10541, having IPECO crew seats not incorporating IPECO Service Bulletin No. A001-25-2. To prevent unwanted movement of crew seats in flight due to wear of the track lock stopblock, incorporate track lock stopblocks of improved design in accordance with the Accomplishment Instructions, Part II, of Fokker F-27 Service Bulletin No. 25-43, dated September 6, 1976.

(50) Applies to airplanes S/N 10505 and 10507 through 10515. To prevent instability of the DC generator control system due to interaction with the static inverters which could result in malfunction of required navigation and communication equipment,

modify the AC lighting conversion system in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 24-63, dated October 11, 1976.

(51) Applies to airplanes S/N 10408 through 10510. To prevent loosening of the aileron stops due to improper design which possibly could adversely affect aileron deflection and lateral control, modify the aileron stop installations in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 27-112, dated October 18, 1976.

(52) Applies to airplanes S/N 10458 and below not incorporating Fokker F-27 Service Bulletin No. 36-26 (Dunlop Service Bulletin No. 36-156). To prevent possible failure of the pneumatic system due to cracking of isolating valve bodies P/N ACM 16724 or ACM 26573 which could deprive the airplane of normal wheel braking and nosewheel steering, modify the isolating valve body in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 36-26, dated June 13, 1977, or Dunlop Service Bulletin No. 36-156, Revision 4.

(53) Applies to all Fokker F-27 airplanes that have accumulated more than 10,000 flights. Compliance is required within the next 1,000 hours time-in-service after August 7, 1980. To prevent possible fatigue cracks and loose rivets in the upper surface of the RH horizontal stabilizer torsion box, inspect the torsion box structure, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 55-53, dated October 3, 1977.

(54) Applies to airplanes S/N 10505 through 10521, 10525 through 10531, 10534 through 10557, 10559, and 10561 through 10564. To prevent loss of the main instrument panel fluorescent lighting system due to short circuiting inspect the fluorescent lamps, and rectify as appropriate, in accordance with the Accomplishment Instructions of Fokker F-27 Service Bulletin No. 33-24, dated January 30, 1978.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314.

This amendment revises Amendment 39-3855, AD 80-12-07 R1.

This amendment (39-8023, AD 80-12-07 R2) becomes effective September 10, 1991.

Issued in Renton, Washington, on August 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-20498 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ASW-14; Amdt. 39-8003; AD 91-17-04]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to MDHC Model 369 series helicopters, that supersedes an existing AD which requires initial and repetitive inspections and checks of main rotor blade fitting assemblies and main rotor hub lead-lag link assemblies for fatigue cracks and corrosion. This new AD retains a mandatory inspection schedule from the superseded AD, but adds three new main rotor blade part numbers that may have manufacturing defects that could result in premature failure of the fitting. Such failures could, in turn, result in severe vibration and ultimately, loss of control of the helicopter.

EFFECTIVE DATE: September 25, 1991.

ADDRESSES: The applicable information notices may be obtained from: MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797, telephone (602) 891-6484; or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5233.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 90-20-15, Amendment 39-6750 (55 FR 38542, September 19, 1990), as corrected (55 FR 50448, December 6, 1990), currently requires initial and repetitive inspections for cracks or broken lugs of certain main rotor blade root fitting assemblies and main rotor hub lead-lag link assemblies on MDHC Model 369 series helicopters. After issuing AD 90-20-15, the FAA has determined that certain newly produced main rotor blade parts use aluminum 7075-T73, in place of aluminum 2014-T6, for the blade root fittings. The new blades are part numbers (P/N's) 369D21100-515, 369D21102-501 and 369A1100-603.

A severe in-flight vibration was recently experienced on a Model 369D with a new dash-numbered blade, P/N 369D21100-515. It was determined, after an emergency landing, that there were two broken lugs in a main rotor blade root fitting. The FAA determined that the lugs may have been broken as a result of manufacturing defects. A very recent incident occurred in Canada in which a MDHC 369D experienced a fractured lug of a fitting after 200 hours' total time in service.

Since manufacturing defects may exist in other products of the same type design which may result in premature fatigue failure of the fittings, the FAA is superseding AD 90-20-15, Amendment 39-6750 (55 FR 38542, September 19, 1990) while retaining the initial and periodic inspections and adding these three additional main rotor blade part numbers to the inspection requirements on MDHC Model 369 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Policies and Procedures, a final regulatory evaluation will be prepared and placed in the

regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6750 (55 FR 38542, September 19, 1990), AD 90–20–15, and by adding the following new AD:

AD 91-17-04 McDonnell Douglas Helicopter Company (MDHC). Amendment 39–8003. Docket Number 91–ASW–14.

Applicability: All MDHC Model 369 series helicopters, certificated in any category, when equipped with any of the following parts: (1) Main rotor blade assemblies having part numbers (P/N's) 369A1100–BSC, –501, –503, –505, –601, or –603; 369D21100–BSC, –503, –505, –507, –509, –511, –513, or –515; and 369D21102–BSC or –501; or (2) Main rotor hub lead-lag link assemblies having P/N's 369A1203–BSC, –3, or –11, and 369H1203–BSC, –11, –21, or –31.

Compliance: Required as indicated, unless already accomplished.

To detect cracks in the main rotor blade attach lugs or in the main rotor lead-lag link attach lugs which could result in failure, and to detect loose bushings in the lead-lag links which could result in severe vibration, either of which could adversely affect control of the helicopter, accomplish the following:

(a) Within 25 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, remove the main rotor blades and conduct an inspection of the exposed portions of the attach lugs for breaks or cracks of the main rotor blade root fittings, part numbers (P/N's) 369A1100–BSC, –501, –503, –505, –601, or –603; 369D21100–BSC, –503, –505, –507, –509, –511, –513, or –515; 369D21102–BSC or –501; and of the exposed portions of the attach lugs of the main rotor hub lead-lag links, P/N's 369A1203–BSC, –3, –11; 369H1203–BSC, –11, –21, –31.

Note: McDonnell Douglas Helicopter Company Service Information Notice HN–211.2, DN–51.4, EN–42.2, and FN–31.2, Part I, dated June 15, 1990, pertains to this inspection.

(b) Within 25 hours' time in service after the initial inspection required by paragraph (a) of this AD and at intervals not to exceed 25 hours' time in service thereafter, unless already accomplished by the requirements of paragraph (a), visually check the exposed portions of all the main rotor blade upper and lower root fittings attach lugs and the main rotor hub lead-lag link attach lugs for broken or cracked lugs. The checks required by this paragraph may be performed by a pilot provided his logbook is endorsed by a properly rated mechanic attesting that the pilot has been trained to conduct the checks. The checks must be recorded in accordance with § 43.9, and the record must be maintained as required by FAR §§ 91.173 or 135.439.

(c) If, as a result of the inspections or checks required by paragraph (a) or (b) above, broken or cracked lugs are found in any main rotor blade root fitting, P/N's 369A1113 and 369A1114, remove the blade from service and replace it with an airworthy blade prior to further flight.

(d) If, as a result of the inspections or checks required by paragraph (a) or (b) above, broken or cracked lugs or loose bushings are found in any main rotor lead-lag link, remove the main rotor hub assembly, P/N 369D21200-BSC on Models 369D, E, F, FF; P/N 369A1200-BSC or 369H1200-BSC on Models 369A (OH-6A), H, HE, HM, and HS; and replace or repair the main rotor hub before further flight.

NOTE: The applicable service information notice listed under paragraph (a) contains restrictions on hub repair.

(e) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance with the AD may be accomplished.

(f) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806–2425.

This amendment (39–8003, Ad 91–17–04) supersedes AD 90–20–15, amendment 39–6750 (55 FR 38542, September 19, 1990) as corrected by the **Federal Register** (55 FR 50448, December 6, 1990).

This amendment (39–8003, AD 91–17–04) becomes effective on September 25, 1991.

Issued in Fort Worth, Texas, on August 8, 1991.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91–20496 Filed 8–26–91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1302

Labeling and Packaging Requirements for Controlled Substances: Anabolic Steroid Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of extension of labeling deadlines.

SUMMARY: Notice is hereby given that the Drug Enforcement Administration (DEA) has granted to Reid-Rowell, Steris Laboratories Inc., and Wyeth-Ayerst Laboratories a 180 day extension of the effective dates for compliance with the labeling requirements associated with Schedule III of the Controlled Substances Act (CSA) for the following pharmaceutical products: Estratest, Estratest HS, Premarin with Methyltestosterone, Testosterone Enanthate and Estradiol Valerate Injection, and Testosterone Enanthate and Estradiol Cypionate Injection.

DATES: This action is effective August 27, 1991.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: By rule published on February 13, 1991 (56 FR 5753), the DEA promulgated regulations which implemented the Anabolic Steroids Control Act of 1990 (title XIX of Pub. L. 101–647). The February 13, 1991 rule announced, among other things, that "All labels and labeling for commercial containers of anabolic steroids, packaged on or after August 27, 1991, shall comply with the requirements of 21 CFR 1302.03–1302.08. Any commercial containers of anabolic steroids packaged prior to August 27, 1991 and not meeting the requirements specified in 21 CFR 1302.03–1302.05 shall not be distributed on or after November 27, 1991. In the event the effective date imposes special hardships on any 'manufacturer' as defined on section 102(15) of the CSA, the DEA will entertain any justified requests for extensions of time submitted to it on or before the required date of compliance." The February 13, 1991 notice also announced that regulations would be published on how one could apply for an exemption for a product which, because of its concentration, preparation,

mixture or delivery system, it has no significant potential for abuse.

The procedure for application for an exemption was proposed in a notice which was published in the **Federal Register** on March 14, 1991 (56 FR 10845) but has not been finalized.

Three manufacturers, Reid-Rowell, Steris Laboratories Inc., and Wyeth-Ayerst Laboratories applied for exemptions for commercial products: Reid-Rowell for the products Estratest and Estratest HS; Steris Laboratories Inc. for Testosterone Enanthate and Estradiol Injection and Testosterone Cypionate and Estradiol Cypionate Injection, and Wyeth-Ayerst Laboratories for Premarin with Methyltestosterone. Wyeth-Ayerst Laboratories asked that the deadline for compliance with the labeling requirements of 21 CFR 1302.03–1302.08 be extended while the application is under consideration. Two other companies submitted applications for products which are being developed. The products are not marketed, therefore, the labeling of commercial containers is not an issue.

The procedure for the application and granting of an exemption will not be made final in time for the processing of the applications before the August 27, 1991 deadline for compliance with the Schedule III labeling requirements. Therefore, an extension of the labeling and packaging deadlines contained in the February 13, 1991 rule is granted for the products named above. As applied to those products, the date for labeling compliance has been extended to February 23, 1992 and the date for sale of non-conforming products has been extended to May 23, 1992. The extension applies to the labeling requirements only. In all other respects these manufacturers must comply with the regulations which were published on February 13, 1991.

Authority: 21 U.S.C. 821, 825, 871(b), 958(e)

Dated: August 21, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Drug Enforcement Administration.

[FR Doc. 91-20451 Filed 8-26-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 755

Claims for Injuries to Property under Article 139 of the Uniform Code of Military Justice

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule outlines procedures for administrative settlement of claims when property is willfully damaged or wrongfully taken by members of the armed forces.

EFFECTIVE DATE: October 3, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Leonard, Head, Affirmative and Personnel Claims Branch, Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400 (703) 325-9880.

SUPPLEMENTARY INFORMATION: Pursuant to the authority conferred under 5 U.S.C. 301; 10 U.S.C. 133, 939, 5013, and 5148; E.O. 11476; and 32 CFR 700.206 and 700.1202; the Judge Advocate General revises 32 CFR part 755. This revision reflects the changes made to Chapter IV of the Manual of the Judge Advocate General of the Navy, JAG Instruction 5800.7C. This part has been revised and shortened. It sets forth the procedures for filing a claim for damage, loss or destruction of privately owned property caused by a person or persons in the naval service, if such damage is caused by riotous or willful conduct by naval members.

This revision was adopted on October 3, 1990. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been determined that such requirements relate entirely to internal Naval management and personnel practices that can be administered more effectively without public participation in the rule-making process. It has therefore been determined that invitation of public comment on this revision would be impracticable and unnecessary and is therefore not required under the provisions of 32 CFR parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in Executive order 12291, and does not have substantial impact onthe public.

List of Subjects in 32 CFR Part 755

Claims, Military personnel.

For the reasons set out in the preamble, title 32, part 755 of the Code of Federal Regulations is revised to read as follows:

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

Sec.

Authority: 5 U.S.C. 301; 10 U.S.C. 939, 5013, and5148; E.O. 11476, as reported in 3 CFR, 1969 Comp., p. 132; 32CFR 700.206 and 700.1202.

Note: This part 755 is Chapter IV of the Manual ofthe Judge Advocate General of the Navy.

Note: The Uniform Code of Military Justice (10U.S.C. 801-940) is referred to in this part 755 as the "UCMJ". TheManual for Courts-Martial, United States, 1984 (E.O. 12473 ofAugust 1, 1984) is referred to in this part 755 as "MCM 1984".

§ 755.1 Statutory authority.

Article 139, UCMJ, redress of injuries to property, is the basis for this chapter.

§ 755.2 Scope.

This chapter provides for assessments against the pay of members of the naval service in satisfaction of claims for property damage caused under certain circumstances. Claims for damage, loss, or destruction of privately owned property caused by a person or persons in the naval service, are payable under Article 139, UCMJ, only if such damage, loss, or destruction is caused by riotous conduct, willful conduct, or acts showing such reckless or wanton disregard of the property rights of others that willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ, are cognizable under Article 139, UCMJ. Charges against pay under these regulations shall be made only against the pay of persons shown to have been principal offenders or accessories.

§ 755.3 Claims not cognizable.

The following claims are not cognizable under this chapter.

(a) Claims resulting from simple negligence.

(b) Claims of subrogees.

(c) Claims for personal injury or death.

(d) Claims arising from acts or omissions within the scope of employment of the offender.

(e) Claims for reimbursement for damage, loss, or destruction of Government property.

§ 755.4 Limitation on claims.

(a) *Time limitations.* A claim must be submitted within 90 days of the incident giving rise to it.

(b) *Acts of property owner.* When the acts or omissions of the property owner, his lessee, or agent were a proximate contributing factor to the loss or damage of the property, assessments will not be made against members of the naval service in excess of the amount for which they are found to be directly responsible, i.e., comparative responsibility for the loss will be the standard for determining financial responsibility.

(c) *Only direct damages considered.* Assessment will be made only for direct physical damages to the property. Indirect, remote, or inconsequential damage will not be considered.

§ 755.5 Complaint by the injured party and investigation.

(a) A claim shall contain a statement setting forth the amount of the claim, the facts and circumstances surrounding the claim and any other information that will assist in the investigation and resolution of the matter. When there is more than one complaint resulting from a single incident, each claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized representative or agent.

(b) Where the claim alleges misconduct by members of the command, a commanding officer to whom the claim is submitted shall convene an investigation under this Manual to inquire into the matter. Where a complaint is received by a commanding officer to whose command the alleged offenders do not report, he shall forward the claim and other pertinent information about the matter to the member's commanding officer who will convene an investigation into the incident. Where the command of the alleged offenders cannot be determined, the claim and supporting materials shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for action.

(c) The investigation shall inquire into the circumstances surrounding the claim, gather all relevant information about the matter (answering the who, what, where, when, why, and how questions) and make findings and opinions, as appropriate, about the validity of the claim under Article 139, UCMJ, and these regulations. The investigation shall determine the amount of damage suffered by the property owner.

(d) The investigation shall make recommendations about the amount to be assessed against the pay of the responsible parties. If more than one person is found responsible, recommendations shall be made about the assessments against all individuals.

§ 755.6 Action where offenders are members of one command.

(a) *Action by commanding officer.* The commanding officer shall ensure the alleged offenders are shown the investigative report and are advised they have 20 days within which to submit a statement or additional information on the incident. If the member declines to submit information, he shall so state in writing within the 20 day period. The commanding officer shall review the investigation and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage on members of the command. If the commanding officer finds the claim payable under these regulations, he shall fix the amount to be assessed against the offenders.

(b) *Review.* If the commanding officer has authority to convene a general court-martial, no further review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial convening authority, the investigation and the commanding officer's action thereon shall be forwarded to the officer exercising general court-martial jurisdiction (OEGCM) over the command for review and action on the claim. That officer's action on the claim shall be communicated to the commanding officer who will take action consistent with the determination.

(c) *Charge against pay.* Where the amount does not exceed $5,000.00, the amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offenders and the amounts so collected will be paid to the claimant. Where the amount exceeds $5,000.00, the claim, the investigation, and the commanding officer's recommendation shall be forwarded for review prior to checkage to Headquarters, U.S. Marine Corps (Code JAR) or the Judge Advocate General, as appropriate. The amount charged in any single month against the pay of offenders shall not exceed one-half of basic pay, as defined in paragraph 126h(2), Manual for Courts-Martial. The action of the commanding officer in ordering the assessment shall be conclusive on any disbursing officer for payment to the claimant of the damages assessed, approved, charged, and collected.

§ 755.7 Action where offenders are members ofdifferent commands.

(a) *Action by common superior.* The investigative report shall be forwarded to the common superior exercising general court-martial jurisdiction over the commands to which the alleged offenders are assigned. That officer shall ensure the alleged offenders are shown the investigative report and permitted to comment on it, should they desire, before action is taken on the claim. That officer shall review the investigation and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage on members of his command. If the claim is found payable under these regulations, he shall fix the amount to be assessed against the offenders and direct the appropriate commanding officers to take action accordingly.

(b) *Forwarding to SECNAV (JAG).* Where it is not practical or possible to carry out the procedure in § 755.7(a) of this section, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of their members until directed by the Secretary of the Navy (Judge Advocate General).

§ 755.8 Reconsideration and appeal.

(a) *Reconsideration.* The OEGCM may, upon a receipt of a request for reconsideration by either the claimant or a member who has been assessed pecuniary liability, reopen the investigation or take any other action he believes is necessary in the interests of justice. If the OEGCM contemplates acting favorably on the request, he will provide all individuals interested in the claim with notice and an opportunity to respond. The basis for any change will be noted in the OEGCM's decision.

(b) *Appeal.* In claims involving $5,000.00 or less, a claimant or member who has been assessed pecuniary liability may appeal the decision to the OEGCM. An appeal must be submitted within 5 days of the receipt of the OEGCM's decision. Appeals will be forwarded, via the OEGCM, to the Judge Advocate General for review and final action. In the event of an appeal, the imposition of the OEGCM's decision will be held in abeyance pending the final action by JAG. If it appears that good cause exists that would make it impracticable for an appeal to be submitted within 5 days, the OEGCM may, in his discretion, grant an

extension of time, as appropriate. His decision on extensions is final and nonappealable.

§ 755.9 Effect of court-martial proceedings.

Administrative action under these regulations is separate and distinct from and is not affected by any disciplinary action against the offender. The two proceedings are independent. Acquittal or conviction of the alleged offender by court-martial is evidence for the administrative action, but is not determinative on the issue of responsibility for damages under these regulations.

Dated: August 21, 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc 91-20450; Filed 8-26-91; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1-91-137]

Safety Zone Regulations; Blynman Canal, Gloucester Harbor, Gloucester, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Blynman Canal from the Blynman Bridge upstream to the Cape Ann Marina, Gloucester, MA. The zone is needed to protect vessels operating in the Blynman Canal from a safety hazard associated with a collapsed portion of the seawall along the northern bank of the canal 100 feet upstream of the Blynman Bridge and the periodic presence of waterside construction equipment working to remove debris from the waterway and stabilize the seawall. When construction equipment is present, entry into this zone is prohibited unless authorized by the Captain of the Port Boston.

EFFECTIVE DATES: This regulation becomes effective on July 18, 1991 at 1:10 p.m. local time. It terminates on November 18, 1991 at 1:10 p.m. local time, unless sooner terminated by the Captain of the Port Boston.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Stephen P. Garrity (617) 223–3000.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury and damage to the persons and vessels involved. This action has been analyzed in accordance with the principles and criteria of E.O. 12612, and it has been determined that there are not sufficient federalism implications to warrant the preparation of a federalism assessment.

Drafting Information:

The drafters of this notice are Lieutenant Commander Stephen P. Garrity, project officer for the Captain of the Port Boston, and Lieutenant John B. Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the collapse of a portion of the seawall along the northern bank of the Blynman Canal 100 feet upstream of the Blynman Bridge, Gloucester, MA, which occurred at 1:10 p.m. local time on July 18, 1991. This safety zone is needed to ensure the safety of vessels intending to transit the Blynman Canal when waterside construction equipment is conducting repair work in the canal in the vicinity of the affected portion of the seawall.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 165.T1113 is added to read as follows:

§ 165.T1113 Safety Zone: Blynman Canal, Gloucester Harbor, Gloucester, MA.

(a) *Location:* The following area is a Safety Zone:

The Blynman Canal from the Blynman Bridge to the Cape Ann Marina.

(b) *Effective Date:* This regulation becomes effective on July 18, 1991 at 1:10 p.m. local time. It terminates on November 18, 1991 at 1:10 p.m. local time, unless sooner terminated by the Captain of the Port Boston.

Regulations.

In accordance with the general regulations in § 165.23 of this part, when waterside construction equipment is conducting repair work in the canal, entry into this zone is prohibited unless authorized by the Captain of the Port Boston.

Dated: August 13, 1991.

W. H. Boland, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Boston, MA.

[FR Doc. 91-20522 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP TAMPA Regulation 91-86]

Safety Zone Regulations: Headwaters of Crystal River in Kings Bay, Crystal Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final.

SUMMARY: The Coast Guard is establishing a safety zone at the headwaters of the Crystal River in Kings Bay, and Crystal Bay, Florida. The zone is needed to protect boaters and their vessels from the safety hazards associated with the anticipated heavy boating traffic in this area during the Labor Day holiday weekend. Vessels in the area are to proceed at "idle speed" during the Labor Day holiday weekend.

EFFECTIVE DATES: This regulation becomes effective on Friday, August 30, 1991 at 6 p.m. It terminates on Tuesday, September 3, 1991 at 6 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant S. P. Metruck, U.S. Coast Guard Marine Safety Office, Tampa, FL at (813) 228–2189.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to prevent damage to the vessels involved.

Drafting Information

The drafters of this regulation are Lieutenant S. P. METRUCK, project officer for the Captain of the Port and

Lieutenant G. TANOS, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

This regulation is necessary because the Labor Day holiday weekend traditionally results in an increased amount of boating traffic on the headwaters of the Crystal River in Kings Bay and Crystal Bay, Florida. In order to decrease the hazard to boaters and their vessels all boats transiting the zone must proceed at "idle speed." The entrance areas to the zone shall be marked with bouys indicating "No wake-Idle Speed."

This regulation is issued pursuant to 33 U.S.C 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways

Regulations

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.2.

2. A new temporary sec. 165.T0786 is added to read as follows:

§165.T0786 Safety Zone: Headwaters of crystal River in Kings Bay, Florida

(a) *Location:* The following area is a safety zone: The headwaters of the Crystal River on Kings Bay and Crystal Bay and the connecting tributaries south and west of the points of land at Crystal Shores on the east and Magnolia shores of the west wherein the Crystal River meets Kings Bay.

(b) *Effective Dates:* This regulation becomes effective on Friday, August 30, 1991 at 6 p.m. It terminates on Tuesday, September 3, 1991 at 6 a.m.

(c) *Regulations:* In accordance with the general regulations of § 165.23 of this part, all vessels transiting in this zone must proceed at "idle speed."

Dated: August 15, 1991.

W.H. Fels,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Tampa, Florida.

[FR Doc. 91–20519 Filed 8–26–91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1510 and 1552

[FRL-3989-2]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes Environmental Protection Agency Acquisition Regulation (EPAAR) coverage on EPA policies for Information Resources Management (IRM). The rule incorporates EPA IRM policies into a contract clause. The intended effect of this rule is to assure that contractors perform IRM related work in accordance with EPA policies.

EFFECTIVE DATE: This rule is effective August 27, 1991.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers, Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street SW., Washington, DC 20460, Telephone: (202) 382–5028.

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Protection Agency (EPA) Information Resources Management (IRM) policies set forth requirements for the performance of IRM related work. IRM is a comprehensive program for the management of EPA information resources to assure their efficient utilization. IRM policies apply to both EPA and contractor performed IRM efforts. It is necessary that contractors comply with IRM policies to assure the effectiveness of the IRM program. This rule provides for the incorporation of all EPA IRM policies into all Agency contracts on a prospective basis.

This regulation was published as a proposed rule in the **Federal Register** on April 26, 1990 at (55 FR 17732). Comments were received from one organization. These comments and the EPA response are summarized below.

The commenter stated that EPA should identify the applicable IRM policies rather than incorporate the proposed clause in each solicitation and contract. The commenter asserted that EPA was in a better position than contractors to determine which IRM policies are applicable to EPA Contracts. The EPA believes that contractors should be generally familiar with IRM policies, which are based on standard commercial practices. If a contractor is unsure of any IRM policy and its applicability to a contract, EPA will respond to any contractor inquiries.

The commenter states that the reference to change orders in the proposed clause is not appropriate because policy changes are not permitted under the Changes clause. The IRM policies are included in part 1510 of the EPAAR, Specifications, Standards, and other Purchase Descriptions. The EPA considers compliance with the IRM policies to be a specification requirement. Accordingly, a change to an IRM policy is a specification change, which is appropriate under the Changes clause.

Since the preparation of the proposed rule, EPA has established five more IRM directives. These directives are included in the final rule.

B. Executive Order 12291

Office of Management and Budget (OMB) Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for OMB review of agency acquisition regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et. seq.

D. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

The EPA IRM policies set forth procedures for the management of information resources. These procedures are commonly accepted practices in the information management community, for both small and large entities. Compliance with these conventional procedures will require minimal cost or effort for any entity, large or small.

List of Subjects in 48 CFR Parts 1510 and 1552

Government procurement, Specifications, Standards, and other purchase descriptions, Solicitation provisions and contract clauses.

For reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is amended as set forth below:

PART 1510—[AMENDED]

1. The authority citation for 48 CFR parts 1510 and 1552 continues to read as follows:

Authority: Section 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Part 1510 is amended to add §§ 1510.001, 1510.002, and 1510.011-79 to read as follows:

1510.001 Definitions.

Information resources management (IRM) means any planning, budgeting, organizing, directing, training, promoting, controlling, and managing activities associated with the burden, collection, creation, use and dissemination of information. IRM includes both the information itself, and the management of information and related resources such as personnel, equipment, funds, and technology.

1510.002 Policy.

Contractor compliance with EPA IRM policies is necessary for the efficient management of information and technology used to support EPA's mission. These policies provide the structure for the Agency's IRM program.

1510.011-79 Information Resources Management.

The Contracting Officer shall insert the clause at 1552.210-79, Compliance with EPA Policies for Information resources management, into all solicitations and contracts.

PART 1522—[AMENDED]

3. Part 1552 is amended to add § 1552.210-79 to read as follows:

1552.210-79 Compliance with EPA Policies for Information Resources Management.

As prescribed in 1510.011-79, insert the following clause:

Compliance With EPA Policies for Information Resources Management (SEP 1991)

(a) *Definition.* Information Resources Management (IRM) is defined as any planning, budgeting, organizing, directing, training, promoting, controlling, and managing activities associated with the burden, collection, creation, use and dissemination of information. IRM includes both information itself, and the management of information and related resources such as personnel, equipment, funds, and technology. Examples of these services include but are not limited to the following:

(1) The acquisition, creation, or modification of a computer program or automated data base for delivery to EPA or use by EPA or contractors operating EPA programs.

(2) The analysis of requirements for, study of the feasibility of, evaluation of alternatives for, or design and development of a computer program or automated data base for use by EPA or contractors operating EPA programs.

(3) Services that provide EPA personnel access to or use of computer or word processing equipment, software, or related services.

(4) Services that provide EPA personnel access to or use of: Data communications; electronic messaging services or capabilities; electronic bulletin boards, or other forms of electronic information dissemination; electronic record-keeping; or any other automated information services.

(5) Services that are subject to the Brooks Act of 1965, as amended (Pub. L. 89-306).

(b) *General.* The contractor shall perform any IRM related work under this contract in accordance with the IRM policies set forth in this clause.

(c) *IRM Policies.* The EPA policies for IRM are set forth in the following Directives:

(1) *Agency Directives.*

2100 Information Resources Management Policy Manual; 1987 Manual; 1987 (EPA/IRM-87/2100).

2115 Guide for ADP Reviews; 1984 (EPA/IRM-84/2115).

2160 Records Management Manual; 1984 (EPA/IRM-84/2160).

2190 Privacy Act Manual; 1986 (EPA/IRM-86/2190).

2180.1 EPA Order—Chemical Abstract Services Registry Number Data Standard; 6/26/87 (EPA/IRM-87/21801).

2180.2 EPA Order—Data Standards for the Electronic Transmission of Laboratory Measurement Results; 12/10/87 (EPA/IRM-87/21802).

(2) *Office of Information Resources Management Directives.*

88-01 Geographic Information Systems (GIS) Guidelines Document; 1/88 (EPA/IRM-88/8801).

88-03 Interagency Agreement (IAG) Guidelines on Use of National Computer Center (NCC) Licensed Software; 11/28/88 (EPA/IRM-88/8803).

89-01 Local Area Networks (LANs) of Personal Computers Policy Directive; 3/89 (EPA/IRM-89/8901).

EPA System Design and Development Guidance; 6/89.

(3) *National Data Processing Division (NDPD) Directives.*

NDPD Operational Policies Manual; 10/88 (EPA/IRM-88/500).

Guide to NCC Services; 1/90.

LAN Administrator's Technical Reference Guide; 12/89.

(d) *EPA IRM Policy Documents.* Information on how to obtain copies of the documents in paragraph (c) of this clause may be obtained by written request to: U.S. Environmental Protection Agency, Office of Information Resources Management, Information Management and Services Division, Mail Code: PM-211D, 401 M Street SW., Washington, DC 20460.

(e) *Additional IRM Directives.* Attachment(s) to this contract may include revised directives and directives otherwise not referenced in paragraph (c) of this clause. Compliance with these directives is as required under paragraph (b) of this clause.

(f) *Change orders.* In accordance with the Changes clause, the Contracting Officer may revise, delete, or add IRM directives. Any adjustment to this contract arising from such a change shall be in accordance with the procedures for an equitable adjustment under the Changes clauses.

Dated: July 29, 1991.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 91-20509 Filed 8-26-91; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 9)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1991 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In this proceeding, the Commission adopts the 1991 user fee update. The fee increases here result from the operation of the update formula set forth in 49 CFR 1002.3(d) and from the policy adopted in Regulations Governing Fees For Services—Update 1989, 5 I.C.C. 2d 817 (1989), for updating the fees for rail finance and abandonment proceedings and complaint and complaint-type declaratory order proceedings. The fee increases involved here result only from the mechanical application of the current update formula, adopted in Regulations Governing Fee for Services—1987 Update, 4 I.C.C. 2d 137 (1987) and the fee policy for gradually increasing previously capped fees for rail finance and abandonment proceedings and complaint and complaint-type declaratory order proceedings, established in 1989 Update, 5 I.C.C. 2d 817. Both methodologies were adopted through notice and comment procedure. Therefore, we believe that good cause exists for finding that the notice and comment is unnecessary for this proceeding under 5 U.S.C. 553(b)(3)(B). Similar procedures were followed in Regulations Governing Fees For Services—1985 Update, 2 I.C.C. 2d 23 (1985) and in Regulations Governing

Fees For Services—1990 update, 7 I.C.C. 2d 3 (1990) (1990 Fee Update).

EFFECTIVE DATE: These rules are effective on October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202–275–7428 [TDD for hearing impaired: 202–275–1721].

SUPPLEMENTARY INFORMATION: The Commission finds the fee increases will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for the waiver of filing fees when the required showing of financial hardship is established.

This decision will not a significant impact upon the quality of the human environment or conservation of energy resources.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick-up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired available through TDD services (202) 275–1721.)

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1.The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. Section 1002.1 is amended by revising paragraph (a) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certification of the Secretary, $6.00.

* * * * *

(f) * * *

(6) * * *

Grade	Rate	Grade	Rate
GS–1	$5.98	GS–9	$13.97
GS–2	6.51	GS–10	15.38
GS–3	7.34	GS–11	16.90
GS–4	8.24	GS–12	20.25
GS–5	9.22	GS–13	24.08
GS–6	10.27	GS–14	28.46
GS–7	11.42	GS–15 and over.	33.48
GS–8	12.64		

* * * * *

3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceedings	Fees
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.	$200.
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10922(b)(5)(A) to transport food and related products.	100.
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64.	2,400.
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite, or the change of a highway name or number.	40.
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923.	200.
(6) An application to remove restriction or broaden unduly narrow authority.	250.
(7) An application for authority to deviate from authorized regular route authority under 49 U.S.C. 10923(a).	100.
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b).	100.
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1).	70.
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue.	20.
(11) Request for name change of carrier, broker, or household goods freight forwarder.	9.
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.4.	60.
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5).	60.
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceeding.	24.
(16) [Reserved]	
Part II: Non-Rail Applications to Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908.	9,800.
(18) A petition to discontinue motor carrier of passenger transportation in one state.	1,000.
(19) [Reserved]	
Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic.	1,900.
(21) An application involving the purchase, lease, consolidation, merger or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.	850.
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706.	12,000.
(23) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	2,000.
(ii) Minor amendment	40.
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349.	200
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.	200.
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d).	150.
(27) A petition for exemption under 49 U.S.C. 11343(e).	200.
(28)–(32) [Reserved].	
Part IV: Rail Application for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	3,100.
(ii) Exempt transaction under 49 CFR 1150.31.	1,200.
(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i).	3,800.

Type of proceedings	Fees
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii).	2,100.
(36)–(37) [Reserved].	
Part V: Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act bankrupt railroads or exempt abandonments under 49 CFR 1152.50).	3,600.
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act.	200.
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40.	800
(41) Exempt abandonments. 49 CFR 1152.50.	1,700.
(42) A notice or petition to discontinue passenger train service.	9,600
(43) [Reserved].	
Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103.	8,200.
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342.	4,400.
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343.	
(i) Major transaction	161,300.
(ii) Significant transaction	32,200.
(iii) Minor transaction	2,700.
(iv) Exempt transaction (49 CFR 1180.2(d)).	650.
(v) Responsive application	2,700.
(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	161,300.
(ii) Significant transaction	32,200.
(iii) Minor transaction	2,700.
(iv) Exempt transaction (49 CFR 1180.2(d)).	650.
(v) Responsive application	2,700.
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343.	
(i) Major transaction	161,300.
(ii) Significant transaction	32,200.
(iii) Minor transaction	2,700.
(iv) Exempt transaction (49 CFR 1180.2(d)).	650.
(v) Responsive application	2,700.
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	161,300.
(ii) Significant transaction	32,200.
(iii) Minor transaction	2,700.
(iv) Exempt transaction (49 CFR 1180.2(d)).	650.
(v) Responsive application	2,700.
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(e)(2) or (b).	32,200.
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706.	30,300.
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706	
(i) Significant amendment	5,600.
(ii) Minor amendment	40.
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322.	300.
(54)(i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, 49 CFR part 1175. 49 U.S.C. 11301.	1,400.
(ii) An exempt transaction under 49 CFR part 1175.	650.
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505.	
(i) Financial exemption petitions.	2,900.
(ii) Abandonment exemption petitions.	2,400.
(iii) Other exemption petitions	1,300.
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40–49. 45 U.S.C. 915.	1,700.
(57)–(59) [Reserved]	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods.	600.
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A).	3,800.
(62) A petition for declaratory order.	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding.	700.
(ii) All others petitions for declaratory order.	1,200.
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.	6,700.
(64) A petition for exemption from filing tariffs by bus carriers.	200.
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).	3,000.
(66) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501.	1,000.
(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501.	1,900.
(68)–(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).	500.
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.	50.
(74) The filing of tariffs, rate schedules and contracts including supplements.	9 per series transmitted.
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less).	60.
(76) Informal complaint about rail rate application.	250.
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPD).	3,300.
(ii) An application for original qualification as self-insurer for cargo insurance.	300.
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual to a minimum; but the minimum does not apply to an instrument submitted in lieu of broker surety bond).	10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR part 1057.	350.
(80) A petition for reinstatement of revoked operating authority.	60.
(81)–(82) [Reserved]	

Type of proceedings	Fees
(83) Petition for reinstatement of a dismissed operating rights application.	350.
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c).	16 per document.
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceeding.	1,200.
(86) Informal opinions about rate applications (all modes).	40
(87)-(95) [Reserved]	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.	12 per delivery.
(97) Request for service list for proceedings.	9 per list.
(98) Requests for copies of the one-percent carload waybill sample.	100.
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.	17 per movement verified.
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.	80.

[FR Doc. 91-20533 Filed 8-26-91; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 56, No. 166
Tuesday, August 27, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1106, 1120, 1126, 1132, and 1138

[Docket Nos. AO-335-A34, etc.; DA-89-033]

Milk in the Rio Grande Valley and Certain Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR parts	Marketing area	Docket Nos.
1138	Rio Grande Valley	A0-335-A34
1106	Southwest Plains	A0-210-A50
1120	Lubbock-Plainview, Texas	A0-328-A28
1126	Texas	A0-231-A58
1132	Texas Panhandle	A0-262-A38

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision provides for merging the marketing areas of the Rio Grande Valley; Lubbock-Plainview, Texas; and the Texas Panhandle orders under one order. The merged area also would be expanded to include all of the unregulated territory in the State of New Mexico and Lipscomb and Parmer Counties, Texas. The regulatory provisions of the "New Mexico-West Texas" marketing order are patterned after the adjacent Southwest Plains order, including that order's payment plan, but with modifications in other provisions. One modification would regulate a distributing plant located in the marketing area under the order even if a greater proportion of its fluid milk sales is made in another Federal order marketing area.

The decision also provides for some price restructuring that would increase the Class I price by 15 cents in eastern New Mexico (Clovis). In addition, the decision provides for reducing the Texas order Class I differential by 12 cents per hundredweight and for establishing a minus 21-cent location adjustment in Zone 6 of the marketing area. One pricing change from the recommended decision denies a proposal to provide for a minus 19-cent location adjustment in Zone 1A (Wichita Falls) of the Texas marketing area and thus maintains the minus 25-cent location adjustment that currently applies. Other conforming location adjustment changes are provided for the Texas and Southwest Plains orders to recognize the pricing structure of the New Mexico-West Texas order.

The changes, which are based on industry proposals considered at a public hearing held December 6–8, 1989, in El Paso, Texas, are necessary to reflect current marketing conditions and to assure orderly marketing in the respective areas.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceedings:

Notice of Hearing: Issued November 21, 1989; published November 27, 1989 (54 FR 48753).

Recommended Decision: Issued October 22, 1990; published October 29, 1990 (55 FR 43345).

Extension of Time for Filing Exceptions: Issued November 23, 1990; published November 29, 1990 (55 FR 49536).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Rio Grande Valley and certain other marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at El Paso, Texas, on December 6–8, 1989. Notice of such hearing was issued on November 21, 1989, and published November 27, 1989 (54 FR 48753).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on October 22, 1990, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exception thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under issue 2(a), subheading pool plants, two paragraphs are added after the 15th paragraph.

2. Under issue 2(a), subheading producer-handler, one paragraph is added after the 13th paragraph, two paragraphs are added after the 16th paragraph, and two paragraphs are added after the 17th paragraph.

3. Under issue 2(b), one paragraph is added after the second paragraph.

4. Under issue 3, 13 paragraphs are added after the 68th paragraph, nine paragraphs are added after the 71st paragraph, seven paragraphs are added after the 81st paragraph, paragraph 84 is revised and four paragraphs are added thereafter, paragraph 87 is revised, and two paragraphs are added after the 89th paragraph.

The material issues on the record of hearing relate to:

1. Interstate commerce, merger of marketing areas under one order, and expansion of the marketing area.

2. Provisions of the merged order with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk, class prices and other uniform provisions;

(c) Distribution of proceeds to producers; and

(d) Administrative provisions.

3. Location adjustments under the merged order and the Texas and Southwest Plains orders.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Interstate commerce, merger of marketing areas under one order and expansion of the marketing area.* The handling of milk in the proposed merged and expanded marketing area is in the current of interstate commerce and directly burdens or obstructs interstate commerce in milk and milk products. Interstate commerce is involved in both the procurement and sale of fluid milk and dairy products by handlers operating plants in the proposed marketing area.

The proposed merged and expanded marketing area, designated as the "New Mexico-West Texas" marketing area, includes the present adjacent marketing areas of Order 120 (Lubbock-Plainview, Texas), Order 132 (Texas Panhandle), and Order 138 (Rio Grande Valley), and presently unregulated territory in the States of New Mexico and Texas. The marketing area includes territory in three states (the entire State of New Mexico, 43 counties in the State of Texas and three counties in the State of Colorado).

Associated Milk Producers, Inc. (AMPI), proposed the marketing area merger and expansion that is adopted herein. AMPI operates a manufacturing plant at El Paso that is pooled under Order 138 and represents virtually all of the dairy farmers who would be producers under the merged order. AMPI also supplies all of the plants operating in the area that would be regulated under the order.

AMPI testified that the area constitutes a single fluid milk market and that all handlers should be subject to the same terms and provisions. AMPI noted that there are significant differences with respect to definitions, pooling, payment and administrative provisions of the three orders. AMPI contended that, because of different diversion limitations and pooling provisions, it is administratively difficult to keep milk moving from a common New Mexico production area to plants that are regulated under different orders.

AMPI testified that a primary reason for merging the markets is to provide for a broader sharing of the reserve milk supplies among all producers who supply distributing plants regulated under the separate orders. Because of different pooling standards and the small size of the Order 120 and Order 132 markets, AMPI testified that it is difficult to apportion reserve milk supplies among the separate markets. AMPI testified that the consequences of pooling reserve milk supplies of each market on the Order 138 market have the result of reducing the Order 138 blend price in relation to the blend prices for Orders 120 and 132.

For example, AMPI noted that the Class I utilization during the first nine months of 1989 was about 86 percent under Order 120 and 76 percent under Order 132. During the same period, Order 138 experienced about a 57 percent Class I use. During this period the blend prices under Orders 120 and 132 averaged $13.86 and $13.65 per hundredweight, respectively, compared to a blend price of $13.13 under Order 138. AMPI testified that these announced blend price differences present difficulties for the cooperative in explaining the basis for the reblended payments that are made to its producer members in a common production area.

AMPI's proposal to merge the marketing areas was supported by a number of interested parties. There was no opposition expressed to the merger by any party, either at the hearing or in briefs.

A relatively small amount of milk is regulated under each of the three separate orders, although Orders 120 and 132 are substantially smaller than the Order 138. Currently, about 10 million pounds of milk per month is regulated under Order 120 and about seven million pounds under Order 132. Of these amounts, in excess of 85 percent is used in Class I under Order 120 (about 8.5 million pounds per month) and over 77 percent is used in Class I under Order 132 (about 5.3 million pounds per month). Over 50 million pounds of producer milk per month is regulated under Order 138 with less than 58 percent being priced in Class I (about 28.8 million pounds per month). Combined, these averages reflect about 67 million pounds per month of producer receipts and a Class I utilization of about 64 percent (about 43 million pounds per month.) Additional quantities of milk and Class I sales, however, would be regulated under the merged order because a plant that is now regulated under the Texas order (Order 126) would be regulated under the merged order. Elimination of these smaller volume markets, through consolidation, will tend to promote a greater degree of marketing stability throughout the marketing area.

A structural relationship exists among the markets to be merged in terms of both overlapping sales and procurement areas. In fact, such a relationship extends beyond the boundaries of the proposed marketing area to include neighboring Federal order markets. Such a situation exists because of the ever-increasing sales areas exhibited by a number of milk processing plants. Also, AMPI, as the primary supplier of raw milk supplies for plants in the three markets, operates throughout a number of other Federal order markets included in its Southern Region that extends well beyond the area in question. However, there is a sufficient association among the three markets to warrant the proposed consolidation as a step in recognizing the regionalization of milk marketing activities that has been occurring.

Two distributing plants located in Lubbock that are operated by Borden and Dean Foods are regulated under Order 120. The Borden plant has fluid milk sales in nonfederally regulated territory and within the marketing areas of Order 126 (Texas) and Order 132. The Dean plant has distribution into the marketing areas of Order 132 and 138. Within the Order 120 marketing area, the two plants account for more than 85 percent of the total route disposition. Plants regulated under Orders 126 and 132 also have sales in the Order 120 marketing area with Order 126 accounting for more than 10 percent of the total in-area route disposition and Order 132 accounting for the remaining route disposition.

Two distributing plants located in Amarillo that are operated by Borden and Plains Creamery were regulated under Order 132 at the time of the hearing. Both plants had sales into the Order 138 marketing area. The Plains Creamery plant also had fluid milk sales into Order 120, the marketing areas of Orders 106 (Southwest Plains), 126, and 137 (Eastern Colorado) and in nonfederally regulated territory. For the most recent month for which data is available, the two regulated plants accounted for about two-thirds of the total route disposition in the Order 132 marketing area. Remaining route disposition in the Order 132 marketing area originates from plants regulated under Orders 106 (about 17 percent, Order 126 (over 12 percent), and Order 120 (about four percent). The sales relationship between plants regulated under Orders 120 and 132 is likely to increase as a result of the closing of the Borden plant at Amarillo in December 1989.

Five distributing plants are currently regulated under Order 138. Three of the plants are located in El Paso and are operated by Borden, Dean and Farmers Dairies. Two plants, operated by Borden

and Dean, are located in Albuquerque. None of these plants have sales in other Federal order marketing areas although all of the plants, except for Borden at El Paso, have sales in nonfederally regulated territory. The five regulated plants account for about 77 percent of total route disposition in the Order 138 marketing area. The plants that are regulated under Orders 120 and 132, combined, account for a little more than 5 percent of route disposition in the marketing area. Other plants regulated under Orders 126, 131 (Central Arizona), 134 (Western Colorado) and 137 account for about 7 percent of route disposition in the marketing area. In addition, nine producer-handlers that are regulated under the order account for more than 9 percent of route disposition in the marketing area.

One additional distributing plant that is located in Clovis, New Mexico, (Gold Star) is regulated under Order 126. Although located within the Order 138 marketing area, it has been regulated under Order 126 since it began operating in February 1989 because a greater proportion of its distribution is in that marketing area. The Gold Star plant is a specialized operation that markets a relatively limited fluid milk product line that is distributed in corrugated boxes through warehouse distribution centers. The distribution area of the plant, which extends through the warehouses that it supplies, covers a broad territory that includes population centers in Louisiana, Texas, New Mexico, Colorado and Oklahoma. Regulation of the plant under the merged order, for reasons set forth under a following issue, will result in regulated plants having a greater proportion of total route disposition in the marketing area than is suggested by record data.

Arrangements for supplying the raw milk needs of distributing plants are made primarily by AMPI. As previously stated, AMPI supplies each of the distributing plants operating in the area with all or part of their fluid milk needs. Milk supplies that are excess to the needs of distributing plants are processed at AMPI's El Paso manufacturing plant that is regulated under Order 138. Milk production that is in excess of all plant capacity in New Mexico and western Texas is shipped by AMPI to distant plants located outside the proposed marketing area for processing. Thus, AMPI performs a major function in supplying and balancing the fluid milk needs of distributing plants and marketing milk that is in excess of fluid milk needs and available plant capacity in the area.

In total, milk production within the proposed order area is surplus to plant needs although milk production is not distributed uniformly throughout the area. The western Texas areas in Orders 120 and 132 are deficit milk-producing areas whereas a substantial surplus exists in New Mexico. New Mexico represents a primary source of supply for all of the distributing plants operating in the area. This is indicated by the sources of producer milk data for each of the orders for the months of May and September during the years 1989 and through 1989.

During May 1985, about 50 percent of the milk pooled on Order 120 originated in New Mexico and 50 percent originated in the western Texas counties in the Order 120 marketing area. The reliance on New Mexico production increased substantially to the point where such production represented more than 91 percent of the milk pooled under the order during May and September 1989. Most of this New Mexico production originated in the eastern counties of the State, particularly the counties of Chaves and Lea. In addition to AMPI, Southern Milk Sales (SMS), a cooperative association that represents several producers, began supplying one of the Order 120 distributing plants in July 1989. Such milk also originated in eastern New Mexico.

New Mexico production has also been a significant supply source for Order 132 distributing plants. During the month of May for the years 1985 through 1989, New Mexico production has represented as much as 84 percent and as little as 50 percent of the Order 132 milk supply. During the month of September, New Mexico production represented as much as 70 percent (1988) and as little as 7 percent (1989) of the Order 132 milk supply. The data for September 1989 reflect a restructing of the milk supplies as well as a decline in the amount of milk pooled under the order. Most of the New Mexico production originated in the eastern counties of the State, particularly the counties of Chaves and Roosevelt.

The primary source of supply for Order 138 handlers is New Mexico and El Paso County, Texas, which is in the Order 138 marketing area. A small amount of milk also originates in two Colorado counties that are within the marketing area. New Mexico production consistently represents in excess of 80 percent of total producer milk while El Paso represents from about 11 to 18 percent of milk pooled under the order.

There are three major production areas in the Order 138 marketing area. The heaviest concentration of production is in the southern part of the marketing area in the two adjacent counties of Dona Ana in New Mexico and El Paso in Texas. More than 43 million pounds of milk as produced in these two counties in September 1989 and more than 48 million pounds in May 1989. Milk produced in these counties is regulated under Orders 138 and 126.

Another primary production area includes the eastern New Mexico counties of Chaves, Lea and Roosevelt. Production in these three counties exceeded 39 million pounds in September and May of 1989. Milk from this three-county area is regulated under each of the orders to be merged as well as Orders 106 and 126.

A third concentration of production is located in the center of New Mexico and includes the three counties of Bernalillo, Socorro and Valencia. Milk production in this area exceeded 17 million pounds in September 1989 and 18 million pounds in May 1989. Milk from this area was regulated under Orders 138 and 106 during May and also Order 126 during September.

Total milk production in the eight counties cited above exceeded 100 million pounds in September and 106 million pounds in May. Such production is substantially in excess of the total amount of producer milk pooled under the three orders. About 60 million pounds of producer milk was pooled under the three orders in September and about 70 million pounds in May, indicating a surplus of production over producer receipts of about 40 million pounds in September and 36 million pounds in May. In terms of producer milk in Class I use for the three orders (46 million pounds in September and 43 million pounds in May), there was about 54 million pounds of surplus production in September and 63 million pounds of surplus production in May originating in this eight-county area. Milk in excess of the fluid milk and plant requirements was pooled under Orders 106 and 126.

There are five counties within the current three marketing areas that had a 1987 population in excess of 100,000. These include three West Texas counties of Potter, which includes Amarillo (105,000), Lubbock (228,000) and El Paso (573,000). In New Mexico, the greatest population is in Bernalillo County, which includes Albuquerque (486,000) and Dona Ana County, which includes Las Cruces (129,000). All of the milk plants that would be fully regulated under the merged order are located in these population centers with the exception of the Gold Star plant at Clovis (Curry County).

Merger of the three marketing areas under one order will tend to promote a greater degree of marketing stability simply by the formation of a larger volume market. The announcement of a single blend price that reflects the utilization of milk over a broader area will be more meaningful and less confusing to producers in a common production area than the announcement of three blend prices that are not entirely reflective of marketing conditions. In fact, absent a merger of marketing areas, statistical information would not be available for release under Order 132 as a result of the December closing of the Borden plant at Amarillo. Furthermore, a merger will recognize the structural relationship among the markets that is exhibited by the overlapping of sales and procurement areas that exists. The three separate orders are no longer viable in view of the marketing practices of handlers and suppliers of raw milk that extend beyond current marketing area boundaries. The application of one order will promote marketing and administrative efficiencies by applying the same terms and provisions to regulated handlers.

In addition to a consolidation of the three marketing areas, the marketing area should be expanded to include currently unregulated territory in New Mexico and western Texas. The marketing area should include the two western Texas counties of Lipscomb and Parmer and the five New Mexico counties of Catron, Cibola, Colfax, Hidalgo and Union. All of the counties are relatively sparsely populated, with the greatest population being in Cibola County (21,000). The territory in this county was formerly a part of Valencia County, which has been a part of the Order 138 marketing area since the inception of the order. Thus, its inclusion within the marketing area will not add any territory that was not previously included in the marketing area.

The six remaining counties that should be added to the marketing area are either adjacent to or completely surrounded by Federally regulated territory. Colfax and Union Counties are located in the northeastern corner of New Mexico while Catron and Hidalgo are in the southwestern area of the State. Lipscomb County is in the northeastern corner of the panhandle area of Texas while Parmer County is on the western border of the State and is surrounded by the current marketing area of Orders 120, 132, and 138.

There are no known processing plants operating in any of the added territory. Inclusion of this territory will simplify the administration of the order and the recordkeeping and reporting requirements of regulated handlers who have sales in these counties. Currently, plants with sales in these counties must designate such sales as route disposition that is made outside the marketing boundaries. Such information is necessary for determining pool plant status. The inclusion of these counties within the marketing area will alleviate the need for this additional sales area data with respect to these counties.

The merged order adopted herein continues the use of the part number for the present Rio Grande Valley order, part 1138. The amended part 1138, upon issuance, would supersede parts 1120 and 1132.

Although the present three orders would no longer exist upon effectuation of the New Mexico-West Texas order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled prior to the effective date of the merger. Such procedures, which would need to be carried out after the merger date, include the announcement of certain class prices and butterfat differentials, submission of reports, computation of uniform prices, payment of obligations and verification activities. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

2(a) *Milk to be priced and pooled.* It is necessary to designate what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants and milk to which the applicable provisions of the order relate.

The definitions included in the order serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "distributing plant," "supply plant," "pool plant," and "nonpool plant." Definitions of persons include "handler," "producer-handler," "producer," and "cooperative association." Definitions relating to milk and milk products include "producer milk," "other source milk," "fluid milk product," "fluid cream product," "filled milk," and "product prices."

Only two of the definitions were of particular issue at the hearing, the pool plant definition (as it relates to plants located in the marketing area that meet the pooling standards of more than one order) and the producer-handler definition. All of the remaining definitions are patterned after the adjacent Southwest Plains order. Official notice of the final decision setting forth the need and basis of such provisions in the Southwest Plains order was taken at the hearing. Also, each of these definitions is contained in one or more of the current orders to be merged. Although there are some differences in style and form, the substance of the definitions is basically the same and is carried out in the merged order. A discussion of those definitions that were of particular issue at the hearing, as well as those that involve substantive modifications, is set forth below.

Pool plants. Essential to the operation of a marketwide pool is the establishment of minimum performance standards to distinguish between those plants substantially engaged in serving the fluid needs of the regulated market and those plants that do not serve the market in a way or to a degree that warrants their sharing in the Class I utilization of the market. The pooling standards that are contained in the attached order would carry out this concept under present marketing conditions.

The pooling standards contained herein were proposed by AMPI and were not opposed by any party. The pooling standards provide for three categories of pool plants: Distributing plants, supply plants and plants located in the marketing area that are operated by cooperative associations that supply the market. All three of the current orders provide for pooling distributing plants and supply plants while the Rio Grande Valley order provides for pooling cooperative association plants.

With respect to distributing plants, each of the three current orders provides two measures to determine whether the performance of such plants in supplying the fluid market is sufficient to warrant their inclusion in the marketwide pool. One standard reflects a plant's overall performance in distributing fluid milk products while a second standard reflects each plant's performance in distributing fluid milk products within the marketing area. Each order, however, specifies the degree of performance in different ways and relies on different measures of milk receipts.

For example, the Lubbock-Plainview order defines a pool distributing plant as one from which there is route disposition (a delivery of a fluid milk product) that is equal to not less than 50 percent of the Grade A milk received at the plant from dairy farmers and from a cooperative association that is a handler

for milk received at the plant unless the volume disposed of in the marketing area is less than 15 percent of such receipts. The Texas Panhandle order specifies that a volume of Class I milk be disposed of on routes that is not less than 50 percent of receipts of Grade A milk from dairy farmers, cooperative association handlers, and from other plants, and that not less than 15 percent of such receipts is disposed of in the marketing area. The Rio Grande Valley order specifies that route disposition in the marketing area be equal to not less than 15 percent of the total Class I sales of the plant and that the total quantity of Class I milk be not less than 50 percent of such plant's receipts of Grade A milk, including milk diverted from the plant to a nonpool plant of the handler operating the plant.

The pooling standards for distributing plants contained herein provide for the use of a plant's total route disposition and route disposition in the marketing area as a percentage of such plant's milk receipts. However, the 50 percent overall requirement and the 10 percent in-area requirement should be based on the plant's total receipts of fluid milk products rather than the varying limited receipts of milk that are specified in the current orders. Reliance on a plant's total receipts of fluid milk products, including producer milk diverted from the plant, represents a better measure of a plant's performance in supplying the fluid milk needs of the market than the current pooling standards of the three orders. The term "fluid milk product" encompasses the receipts that collectively are currently specified under the three orders (milk from dairy farmers, cooperative association handlers and other pool and nonpool plants). Milk that is diverted from the plant, either by the plant operator or by a cooperatives association, also represents a supply of milk that is associated with the weekly or seasonal requirements of the particular plant's needs for fluid milk. As such, it is appropriate to utilize such receipts of milk in determining whether the plant should be pooled under the order. Likewise, milk that may be received by diversion from another pool plant is an integral part of the receiving plant's milk requirements.

A plant that distributes less than 10 percent of its receipts inside the marketing area should not be a fully regulated plant under the merged order. A plant with a limited association with the market is not a major competitive factor for fully regulated handlers whose sales are primarily in the marketing area. Only three partially regulated plants were identified as having sales within the consolidated marketing area. One of these plants is located in Kansas and two are located in California. Full regulation of such plants is not necessary to assure the orderly marketing of milk in the proposed market. Payment provisions that are currently applicable to such plants are contained in the merged order to assure that route disposition in the marketing area from such plants is treated in such a way as to minimize any buying advantage on raw milk relative to fully regulated handlers. Such payment provisions have been applicable under each of the three orders for many years.

A distributing plant that is located in the marketing area, and which meets the pooling standards of the merged order and another order, should be regulated under the merged order regardless of the quantity of fluid milk products distributed in any other order marketing area. However, such pool plant status should be accorded only as long as the merged order's Class I price at the plant location is not less than the Class I price that would be applicable at the plant if it were regulated under the provisions of another Federal order in which the plant has greater route disposition.

This provision to "lock" a plant into regulation under the merged order was proposed by AMPI and was opposed by several handlers who operate a number of plants that are regulated under either the three orders to be merged or adjacent Federal orders. The issue of determining the order under which a plant should be regulated centered on the marketing conditions that arise as a result of the operation of the Gold Star distributing plant located in Clovis, New Mexico. As indicated under a previous issue, the Gold Star plant is principally a fluid milk processing plant that has a wide distribution area. The plant is currently regulated under the Texas order since it has a greater proportion of its fluid milk sales in that marketing area than in any other Federal milk marketing area.

AMPI testified that even with a consolidation of the three marketing areas, is anticipated that the plant would continue to have a greater proportion if its sales in the Texas marketing area. AMPI contends that the plant should be regulated under the merged order since it competes for supplies of milk in a common procurement area with other plants that would be regulated under merged order, particularly plants that are located at Amarillo and Lubbock. Thus, AMPI contends that regulation under the merged order would assure that producers in the same production area would receive the same price. Furthermore, AMPI contends that regulation under the merged order would facilitate the shifting of milk supplies as needed among the Clovis, Amarillo and Lubbock plants. Currently, milk of producers who supply Lubbock and Amarillo plants cannot be shifted to the Clovis plant during certain months of the year because of certain provisions of the Texas order relating to the movement of producer milk supplies among markets.

A number of the handlers contended that the Gold Star plant should not be subject to pooling under the merged order if a greater proportion of its fluid milk sales is made in another Federal order marketing area. They maintain that plants should be regulated under the order where most of its sales are made so that the handler operating the plant is subject to the same terms and provisions as other handlers who are the primary competitors for sales of fluid milk products. They testified that the need to make an exception to such a policy (such as frequent shifts in regulation among orders as a result of minor sales changes) is not evident with respect to Gold Star since the primary population centers served by the plant are located in the Texas marketing area. Handlers further maintained that regulating Gold Star under the merged order would result in removing a significant quantity of Class I sales from the Texas pool. The handlers maintained that Class I sales in the Texas marketing area should accrue to the benefit of all dairy farmers who are producers under the Texas order rather than dairy farmers who are producers under the merged order.

Regulation of the Gold Star plant under the merged order rather than the Texas order would have no impact on Gold Star's cost for milk at minimum order class prices. The Class II and Class III prices would be identical under both orders and the Texas order Class I price adjusted to the Clovis, New Mexico, location would be the same as New Mexico-West Texas order Class I price at the same location. Currently, the Texas order recognizes the Class I prices that are established under the Rio Grande Valley order and provide for a minus $1.08 per hundreweight location adjustment at Clovis. Such location adjustment is the difference between the Texas order Class I differential of $3.28 and the $2.20 Class I differential that currently applies at Clovis under the Rio Grande Valley order. Recognition of the merged order's Class I price at Clovis would be continued under the Texas

order, although the price levels under both orders would be modified to some extent as set forth under issue No. 3. Since the classified use value of milk would be the same whether the plant is regulated under the merged order or the Texas order, a primary consideration is the difference in minimum order blend prices to producers that would be applicable under the respective orders at Clovis.

A Federal order blend price reflects the marketwide utilization of all producer milk associated with the market. The application of different order blend prices that reflect different supply and demand conditions to plants that rely on a common production area for a source of milk raises the potential for unstable marketing conditions in that the delivery of adequate supplies of milk for fluid use may be jeopardized. This would be expected since, all other factors being equal, dairy farmers would prefer to supply the plant at which the higher price applies. Consequently, the plant at which the lower blend price applies may have difficulty attracting a supply of milk even though identical class prices may apply.

It is not possible at this time to predict the blend price differences that may occur between the Texas and merged order. As previously stated, blend prices reflect a number of economic factors that influence supply and demand conditions in a given market. In addition, it is not possible to predict the amount of reserve milk supplies that will be pooled under the respective orders. With all the different factors involved, it would be extremely unlikely that the Texas order and merged order blend prices adjusted to the Clovis location would be the same.

The Rio Grande Valley order blend price has continually exceeded the Texas order blend price at Clovis since the location adjustment provisions of the Texas order were amended on September 1, 1986, to conform with the Class I differentials that were mandated in the 1985 Farm Bill. The Rio Grande Valley order blend price exceeded the Texas order blend by as much as 84 cents and by as little as 25 cents per hundredweight during September 1, 1986 through October 1989. It is not known if the Rio Grande Valley blend during this period is indicative of the blend prices that will result in the future. However, the Rio Grande Valley order is the largest and lowest Class I use market of the three orders that are being merged. Consequently, the blend price of the merged order, all other things being equal, would have exceeded the Texas blend at Clovis by a somewhat greater amounts than previously indicated.

The Gold Star plant at Clovis is located deep within the proposed marketing area. The supplies of milk for the plant are primarily located in eastern New Mexico counties that are also a source of supply for other distributing plants at Amarillo and Lubbock that would be regulated under the merged order. As a result, this plant should be regulated under the merged order rather than under another order where most of its sales of fluid milk products are made. This will provide greater assurances that prices established at all plant locations (both class prices to handlers and blend prices to producers) will establish sufficient incentives for the delivery of milk for fluid use. There would be no assurance that regulating the plant under the order where it has the most sales would result in a price at such plant that is sufficient to attract milk to a specific location under the marketing conditions depicted.

Exceptions to the previous conclusion to regulate the Gold Star plant under the merged order were filed by two handlers, Borden and Southern Foods Group. In this regard, it is noted that Southern Foods Group consists of the Schepps-Foremost plants, Houston Dairy and four plants operated by MorningStar that have acquired since the hearing. However this decision continues to utilize the Schepps-Formost and MorningStar names in all areas except for responses to exceptions that have been filed by Southern Foods Group rather than the prior entities.

The exceptions filed by the two handlers merely assert that there is no valid economic basis for regulating the Gold Star plant under the merged order and do not offer any convincing arguments that are contrary to the previous findings and conclusions. The decision clearly sets forth the economic reasons that establish the need to regulate the plant, or any other similarly situated plant, under the merged order. In its simplest terms, the decision concludes that procurement competition, rather than sales competition, is controlling in this case. It is also noted that the Gold Star plant must first meet the pooling standards of the merged order to be regulated under such order. This ensures that the plant has a sufficient association with the market to justify its regulation under the merged order even though a greater proportion of its fluid milk sales may be made into another Federal order marketing area.

The order should also provide shipping standards for pooling supply plants under the order on the basis of actual shipments of milk from such plants to distributing plants. The attached order provides for pooling a supply plant that transfers at least 50 percent of its receipts of milk during the month to pool distributing plants. The supply plant's receipts of milk would include the total quantity of milk received from dairy farmers and cooperative association handlers. Milk received from dairy farmers would include milk that is diverted from the supply plant as producer milk but would exclude milk received by diversion from another plant at the supply plant. Any supply plant that qualifies as a pool plant during each of the immediately preceding months of September through January should continue to qualify as a pool plant in each of the following months of February through August.

Each of the current orders that are being merged provides for pooling supply plants. However, there are no supply plants pooled under any of the orders and there is no recent history of supply plant activity in any of these markets. The production area is characterized by the existence of large dairy farms from which milk is moved directly to plants for processing without any need for the consolidation of milk supplies at supply plants. However, the merged order should provide for pooling supply plants in the event that any such plant should become associated with the market. In the event that such a plant were to become associated with the merged order, its performance should be based entirely on transfers of milk from such plant to pool distributing plants. No recognition should be given to milk that may be diverted from a supply plant to a distributing plant in determining whether the supply plant should be pooled under the order. Milk that is diverted from a supply plant to a distributing plant is essentially direct-shipped milk that, in effect, negates the necessity for the existence of supply plant. Although some marketing efficiencies can result by basing the pooling performance in part on diverted milk, depending on the locations of the dairy farms relative to supply and distributing plants, there is no history of supply plant activitiy in these markets on which such a decision can be made. Consequently, in the absence of specific marketing conditions, the pooling standards for supply plants should be based on transfer of milk to recognize the traditional function of supply plants. In conjunction with the pooling standard, the supply plant definition contained herein also is restricted to

recognize transfers of milk to distributing plants.

The merged order should continue to provide for pooling cooperative association plants that are located in the marketing area as is currently provided under the Rio Grande Valley order. Such a provision recognizes the important function performed by cooperative associations in balancing the fluid milk needs of distributing plants.

Currently, there is only one manufacturing plant, operated by AMPI at El Paso, that is pooled under the Rio Grande Valley order. Such plant processes milk supplies that are in excess of the fluid milk needs of distributing plants. It is pooled under the order on the basis of AMPI's total preformance in supplying the market.

Such a plant is currently pooled under the order if at least 50 percent of the milk delivered during the month by producers who are members of the cooperative association operating the plant is delivered to pool plants operated by other handlers. AMPI proposed that this overall pooling standard be reduced to 35 percent even though about 70 percent of its producer milk supply under the Rio Grande Valley order is delivered to pool plants. The lower pooling standard was proposed because AMPI anticipates that the substantial production increases that have occurred in New Mexico are likely to continue.

The Class I utilization of producer milk under the Rio Grande Valley order has declined from a yearly average of 72 percent in 1987 and 68 percent in 1988 to a ten-month average of 58 percent in 1989. However, the Class I utilization of producer milk under the order is not indicative of the milk production that is available in New Mexico. As previously stated, a substantial quantity of New Mexico production is pooled under the Southwest Plains and Texas orders. Consequently, the reduced pooling standard for cooperative association plants seems appropriate in view of marketing conditions.

The 35 percent pooling standard for a cooperative association plant that is located in the marketing area should be based on the total quantity of producer milk that is marketed by the cooperative association, not just the milk of members of the cooperative association. A true measure of the cooperative's overall performance must include all milk that is marketed. Also, the 35 percent standard should relate to shipments of milk to pool distributing plants, rather than shipments to pool plants of other handlers, in order to recognize the extent to which the cooperative association supplies the fluid milk needs of the market.

The pooling standards of the merged order for supply plants and cooperative association plants also provide for adjustments of up to 100 percentage points in the shipping standards by the Director of the Dairy Division. The opportunity to increase or decrease the shipping standards, if adjustments are needed to obtain additional shipments or to prevent uneconomic shipments, provides additional flexibility of the order to adjust to changes in supply and demand conditions.

The pool plant provisions of the order also specify that certain types of plants should not be pool plants. In addition to applying to "producer-handler" plants, such provisions basically pertain to distributing plants and supply plants that meet the pooling standards of other Federal orders. Such provisions are necessary to help eliminate the conflict that would otherwise exist if plants meet the pooling standards of more than one order.

Nonpool plants. A "nonpool plant" definition is provided to facilitate formulation of the various provisions of the order as they apply to such a plant. The three separate orders contain comparable nonpool plant definitions except that the Lubbock-Plainview order defines a "state institution plant" as a nonpool plant. It is also noted that the Rio Grande Valley order treats a governmental agency plant as a producer-handler.

The nonpool plant definition of the merged order includes the first four categories of nonpool plants that are contained in the three separate orders. This definition includes an "other order plant," a "producer-handler plant," a "partially regulated distributing plant," and an "unregulated supply plant." In addition, the merged order would include a "Governmental agency plant" as a nonpool plant, which basically incorporates a "State institution plant" that is currently defined in the Lubbock-Plainview order. Such a plant would be exempt from only the pricing and pooling provisions of the order, rather than from all order provisions as was proposed by AMPI. Such treatment would carry out the current regulatory treatment of the Rio Grande Valley order for a governmental agency plant. In addition, the merged order contains an "exempt plant" definition.

An exempt plant is defined as a plant that has a monthly route disposition of 150,000 pounds or less. The handler operating the plant would be exempt from the pricing and pooling provisions of the order, but would be required to file reports and maintain adequate books and records to allow the market administrator to verify the exempt status.

The exemption was proposed by AMPI on the grounds that a plant with such a limited volume of sales would not be a major competitive factor in the market. AMPI testified that one plant that was operating at the time the proposal was submitted would have qualified for the proposed exemption, but such plant ceased operations before the hearing was held.

It is noted that the 150,000-pound monthly size limitation for an exempt plant is substantially less than the average size of producers that are currently associated with these markets. Consequently, it would appear that a plant of such size would not be a disruptive factor in the market either in terms of sales of fluid milk products or in the procurement of raw milk supplies. Thus, the proposal, which was not opposed by any party, is adopted in the merged order.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and making payments for milk under the merged order. The degree of regulatory responsibility of the various categories of handlers is specified in other provisions as is currently provided under the separate orders. The attached order designates handler status for the following persons:

(1) Any person who operates a pool plant;

(2) A cooperative association with respect to milk of producers that is diverted for its account;

(3) A cooperative association with respect to bulk tank milk of producers that is picked up at the farm for delivery to the pool plant of another handler;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler and any person who operates an exempt plant or a governmental agency plant; and

(6) The operator of an other order plant from which milk is disposed of in the marketing area and the operator of an unregulated supply plant.

The attached handler definition is a composite of the handler definitions of the three orders being merged and the definition proposed by AMPI. The AMPI proposal is similar to the current three order, but excluded persons who operate other order plants and unregulated supply plants. No testimony or reasons were provided as to why such persons should be excluded from the handler definition. Since such persons are currently defined as

handlers and in the event that reports of milk receipts and disposition are needed from such persons by the market administrator, the merged order provides for a continuation of such designation. Also, the merged order identifies as handlers persons who operate an exempt plant or a governmental agency plant since such categories of nonpool plants are recognized under the order.

The AMPI proposal provided for a modification of the cooperative association bulk tank handler provision that is incorporated in the merged order. Each of the current orders provides that a cooperative association can be the handler on milk that is picked up at the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under the control of the cooperative association. However, two of the orders provide the cooperative association with the option to not be the handler on such milk by notifying both the market administrator and the handler operating the pool plant.

The attached order permits the pool plant operator to be the responsible handler on such milk if both the cooperative association and the pool plant operator notify the market administrator prior to the milk movement that they have agreed to this handling arrangement. The plant operator would also have to agree to purchase the milk on the basis of weights and tests determined at the farm. Under this arrangement the pool plant operator would be responsible for the milk in the same manner as producer milk received from individual producers at the plant directly from the farm. If the cooperative association and the pool plant operator do not agree on this handling arrangement, then the cooperative association would be the handler of such milk.

Producer-handler. The merged order provides for the exemption of a "producer-handler" from the pooling and pricing provisions of the order. The definition of a producer-handler that is contained in the merged order is the definition that is currently contained in the Rio Grande Valley order. Such definition is modified slightly to remove language that is no longer necessary and to specifically provide for the use of nonfat dry milk to fortify fluid milk products.

Each of the current orders being merged contains a producer-handler definition. The three definitions are significantly different in both construction and substance. The only relevant definition of the three, however, is the Rio Grande Valley order definition since there are no producer-handlers operating under the Lubbock-Plainview or Texas Panhandle orders.

In general terms, the Rio Grande Valley order defines a producer-handler as a person who processes and packages his or her own farm's milk production for route distribution in the marketing area. A producer-handler cannot receive fluid milk products from other dairy farms or from any source other than a pool plant. Purchases of fluid milk products from pool plants are limited to 11,000 pounds per month. The order also provides that a person who desires to qualify as a producer-handler must furnish proof to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the fluid milk products handled is the personal enterprise of and at the personal risk of such person. The order also provides that the operation of the processing and distribution business must also be the personal enterprise of and at the personal risk of the same person.

The Rio Grande Valley order also defines a governmental agency plant and dairy farmers who produce and market "certified" milk as producer-handlers. These two aspects of the definition are deleted from the merged order definition since a governmental agency plant is handled under another provision and because there are no longer any certified milk producers.

AMPI testified that all persons operating plants that have route disposition in the marketing area should either be fully or partially regulated by the merged order. However, AMPI also testified that if it is the policy of the Department to provide an exemption from full regulation of persons who basically distribute only their own farm production on routes in the marketing area, then the producer-handler definition contained in the hearing notice should be adopted.

AMPI's proposed producer-handler definition contains substantial regulatory language that is designed to specify in greater detail than current provisions those criteria which the market administrator must consider in determining whether a person qualifies as a producer-handler. Generally, AMPI testified that the detailed provisions address the issue of whether the production, handling and distribution functions are attributable to the same person and whether such persons interact with other producers or handlers. Basically, AMPI testified that the proposed definition carries out the concept of the current definitions by requiring that a producer-handler exercise complete and exclusive control over the operation, both at the plant and farm level. Also, a producer-handler would be prohibited from being directly or indirectly associated with the business or management of, or having a financial interest in, any other handler's or producer's operation. In addition, the proposal would limit a producer-handler's purchases from pool plants to the lesser of 5 percent of Class I disposition or 5,000 pounds per month.

Two handlers that operate fully regulated plants supported AMPI's position with respect to producer-handlers. One handler testified that producer-handlers who are big enough to be a factor in the market should be fully regulated. The other handler testified that producer-handlers have a competitive advantage over fully regulated handlers since producer-handlers are not required to pay at least the minimum order Class I price for milk disposed of in fluid milk products. Also, the handler testified that the area is characterized by the existence of large production units, both among producers and current producer-handlers. Consequently, the handler testified that the producer-handler definition should continue to limit the amount of milk that producer-handlers can purchase from other handlers. The handler basically expressed the view that if producer-handlers were able to purchase unlimited supplies of milk from pool plants, they would have an advantage in competing with regulated handlers for fluid milk accounts because they are not fully subject to classified pricing.

Five producer-handlers that are currently regulated under the Rio Grande Valley order opposed the producer-handler definition proposed by AMPI. As an alternative, they proposed that the producer-handler definition of the Southwest Plains order be implemented in the merged order. They contend that the permitted purchases from pool plants (both in the AMPI proposal and the current Rio Grande Valley order) are overly restrictive for a producer-handler operation. They contend that producer-handlers are in general becoming a lesser factor in Federal order markets, even in those markets where there are no limits on the amount of regulated milk that producer-handlers can purchase. Furthermore, they argue that since purchases from pool plants accrue to the benefit of all producers who supply the market, there need not be any restriction on such purchases.

The producer-handlers also testified that they do not have a competitive advantage over regulated handlers because of the costs associated with

prod .cing and balancing their own supplies of milk. Furthermore, they contend that they can only service certain types of accounts because their own farm production cannot be easily increased or decreased to meet varying sales volumes. Thus, the producer-handlers maintain that they are not able to compete with regulated handlers for sales to institutions, schools, or large-volume accounts whose demand for fluid milk products may fluctuate substantially.

The marketing of milk by producer-handlers in a regulated market has the potential of creating disorderly marketing conditions. When milk of a producer-handler is sold in a Federal milk marketing area, such milk is not priced by the order. In such case, the order does not provide uniform regulated pricing among competing handlers since fully regulated handlers must pay the minimum order Class I price for milk in fluid uses while producer-handlers are not required to do so. This raises the potential for competitive inequities among handlers. Furthermore, there is not an equal sharing among all dairy farmers in the market of the returns from the sale of all milk in all uses since producers whose milk is being priced under the order do not share in the Class I sales of producer-handlers.

The potential for producer-handler activity in a regulated market to be disruptive is minimized to the extent that they are required to be self-sufficient in their operations by order provisions. Generally, producer-handlers do not have a demonstrated advantage in a market in their capacity as either handlers or producers as long as they are solely responsible for their production and processing facilities and assume essentially the entire burden of balancing their production with their fluid milk needs. The degree to which producer-handlers must bear the risk of their total operations, including distribution activities, is a function of market characteristics and is the primary issue involved with respect to the producer-handler definition of the merged order.

Producer-handlers have historically represented a significant proportion of the fluid milk products distributed in the Rio Grande Valley marketing area. The nine producer-handlers regulated under the order during the most recent four months for which data is available (July-October 1989) represented as much as 9.7 percent and as little as 9.2 percent of route disposition in the marketing area.

Over time, the number of producer-handlers has gradually declined from 14 in January 1985 to the nine that are currently operating. During this time period, the proportion of sales each month by producer-handlers has generally tended to increase from about 7 or 8 percent in 1985 to 9 or 11 percent in 1989.

Exceptions filed on behalf of five producer-handlers indicate that the role of producer-handlers in the Rio Grande Valley market has been declining, rather than increasing, when their activities are compared over a longer period of time. Such a conclusion, however, does not detract from the observation that fluid milk sales by producer-handlers are a significant factor in the market.

In view of the influence of producer-handlers in the Rio Grande Valley market, the producer-handler definition of the merged order should not be relaxed to allow unlimited purchases from pool plants as proposed by producer-handlers. The Southwest Plains order definition that they proposed is not appropriate for the merged order. The marketing conditions of the Southwest Plains order are significantly different from those of the Rio Grande Valey order. Producer-handlers are an insignificant factor in terms of the Southwest Plains market in that such handlers represent less than 1 percent of sales in that marketing area. In addition, the producers who supply the Southwest Plains market are on average substantially smaller than those who supply the Rio Grande Valley market. In terms of the average daily deliveries per producer, producers who supply the Rio Grande Valley market are about 10 times larger than those who supply the Southwest Plains market. If any of these larger producers should acquire producer-handler status, they could represent a significant volume of fluid milk sales that would not be priced under the order.

In view of the production characteristics and the role played by producer-handlers in the Rio Grande Valley market, the producer-handler definition of the merged order should continue to require that producer-handlers bear a significant proportion of the risk of their total operations in order to be exempt from the pricing and pooling provisions of the order. Unlimited purchases from pool plants would amount to a reduction of the risk currently required of producer-handlers, even though such purchases would accrue to the benefits of all producers. Unlimited purchases from pool plants, in effect, results in nothing more than allowing producer-handlers to transfer a portion of the cost of balancing their milk supplies to other producers who supply the market. In order to assure that producer-handlers are bona fide operations that assume essentially all of the risk, the Rio Grande Valley order has restricted purchases from pool plants to 11,000 pounds per month since the inception of the order in 1962.

The Rio Grande Valley order producer-handler definition differs from that of the Southwest Plains in another significant manner. The Rio Grande Valley order requires that the distribution business, as well as the production and processing facilities, must be the personal enterprise of and at the personal risk of the same person. The Southwest Plains order does not address the distribution activities in its definition. This aspect of the Rio Grande Valley order has also been included since the order's inception. The continuation of this requirement in the merged order essentially encompasses the major criteria for acquiring producer-handler status under the AMPI proposal, but without the unnecessary order language contained in that proposal.

Exceptions filed on behalf of five producer-handlers indicate that AMPI's proposed producer-handler definition is more restrictive than the adopted provision. Thus, they disagree with the finding that the adopted provision would encompass the major criteria of the AMPI proposal. They expressed a concern that such a conclusion could provide a basis for applying the provision in a more restrictive manner.

In this regard, the AMPI proposal has been denied and is not incorporated in the attached order. However, the current provision of the Rio Grande Valley order addresses the distribution activities of producer-handlers, which is a major component of the AMPI proposal. In any event, it is not apparent that a continuation of the current provision somehow implies a different interpretation because it deals with an aspect of the AMPI proposal.

The current Rio Grande Valley order producer-handlers have operated under that order's definition for a number of years. Thus, they are knowledgeable of the current requirements to maintain their exemption from the pricing and pooling provisions of the order. To the extent that they currently satisfy the requirements for producer-handler status, they would be expected to continue to retain their current status under the same provision in the merged order.

Exceptions filed by five producer-handlers contend that unlimited purchases from pool plants should be permitted or at least be increased to 45,000 pounds per month. The contend that the 11,000 pound limit is overly

restrictive and that the decision does not address certain alleged benefits that could be associated with unlimited purchases from pool plants. The producer-handler contend that unlimited purchases from pool plants would result in an increase in Class I sales that would benefit all producers and would also reduce the need for producer-handlers to increase their production to cover all anticipated needs which could intensify market surplus disposal problems. At the same time they contend that there is a reluctance by fully regulated handlers to supply producer-handlers with additional milk needs. Thus, they maintain that the market itself will establish a limitation on purchases by producer-handlers from pool plants and that the order need not place a limit on such purchases.

It is difficult to conclude how benefits could accrue to all producers by providing for unlimited purchases from pool plants if there is a reluctance on the part of such pool plants to furnish supplies of milk to producer-handlers. The two conclusions appear to be contradictory. Nevertheless, the decision clearly sets forth the primary reason for continuing the current limitation on purchases from pool plants. As previously stated, unlimited purchases from pool plants result in producer-handlers being able to transfer a portion of the cost of balancing their milk supplies to other producers who supply the market. A significant proportion of the risk of total operations should be borne by producer-handlers in order to be exempt from pricing and pooling provisions in view of the production characteristics of the market and the substantial amount of producer-handler activity in the market. Also, there is no indication that the amount of purchases from pool plants should be increased from the current level.

Producer-handlers should not be subject to the administrative assessment applied under the order to defray the cost of administering the order as was proposed by AMPI. None of the orders being merged apply such an assessment to producer-handlers. The principal beneficiaries of the market administrator's activities with respect to producer-handlers are the regulated parties in the market. They are assured that producer-handlers are operating in accordance with the order requirements for attaining a partial exemption from the order.

Producer and producer milk. The "producer" and "producer milk" definitions of the merged order identify those dairy farmers who constitute the regular source of supply for the merged market and the milk that would be priced and pooled under the order. Generally, the producer definition identifies those dairy farmers who can or cannot be producers while the producer milk definition sets forth greater details on the ways that such milk can be handled and be subject to pricing under the order. The three current orders carry out the same concept although the construction of the regulatory language differs among the three orders and two of the orders contain in the producer definition the different handling methods that will be specified in the producer milk definition. Both definitions provided herein follow closely the definitions proposed by AMPI, except for a few modifications.

"Producer" status under the merged order is provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for disposition in the marketing area and whose milk is received at a pool plant directly from the dairy farmer or received by a cooperative association as a bulk tank handler. Producer status is also accorded to a dairy farmer who has established an association with the market and whose milk is diverted to nonpool plants on occasion for surplus disposal by cooperatives or pool plant operators. Such standards for producer status are currently specified under each of the three orders.

The merged order also provides that certain categories of operations should be excluded from the producer definition. Such exemption applies to producer-handler operations, exempt plants and plants operated by a governmental agency. Since these operations are exempt from the pricing and pooling provisions of the order, milk which is excess to the needs of such operators should not be treated as producer milk when it is moved directly from the farms of such operators to a pool plant. Any such milk delivered to a pool plant from such operations would be other source milk.

In addition, the merged order precludes the possibility of a dairy farmer being a producer under two orders with respect to the same milk. This is currently provided under each of the current orders.

AMPI proposed that producer status should not be provided to any person who delivers milk to or receives milk from a producer-handler, an exempt plant or who has disposition of fluid milk products to consumers at the farm in excess of 110 pounds per day during the month. Such a provision is not contained in any of the current orders and is not necessary under the merged order.

Provisions discussed previously excluded producer-handler, governmental agency and exempt plants from being pool plants. Thus, any dairy farmers who ship milk from the farm to a governmental agency or exempt plants would not be producers under the order. Furthermore, producer-handlers cannot receive milk from dairy farmers without losing their exempt status. A producer-handler that receives milk from another dairy farmer would become a pool plant under the order and, consequently, the dairy farmer supplier would qualify as a producer. Also, milk shipped from any such facility to another person who operates a pool plant would be treated as other source milk.

The proposed provision appears to be directed primarily to a hypothetical relationship between these exempt operations and another dairy farmer. The situation would involve the movement of milk from the exempt operation to a dairy farmer who has producer status under the order. Apparently, AMPI is concerned that such a subterfuge would allow an exempt handler to obtain the order blend price for milk that is surplus to the fluid milk needs of the handler's operations.

With respect to a producer-handler, such a movement of milk would represent a transfer of a portion of the risk associated with the operation since other dairy farmers would be bearing a portion of the costs of balancing the milk supplies for the producer-handler. In the absence of bearing the total risk, the requirements of the producer-handler definition in the merged order would not be met. In any event, there was no evidence presented, or any suggestion of the existence of such a marketing problem with respect to any of these exempt operations. Likewise, there is no indication that dairy farmers may be selling unprocessed milk directly to consumers. In the absence of evidence of a marketing problem, these aspects of the AMPI proposal are denied.

Producer milk is generally that milk which is received by the operator of a pool plant, milk that is received by a cooperative association as a bulk tank handler for delivery to a pool plant, and milk that is diverted to a nonpool plant. This is the case with respect to each of the orders being merged and such definition is continued in the merged order as proposed by AMPI. Modifications that were also proposed by AMPI are also incorporated in the merged order. The modifications

concern the treatment of milk that is in transit at the end of a month, the amount of milk that may be diverted to nonpool plants, the degree of association with the market required of individual producers, the manner of accommodating excess diversions to nonpool plants, and the pricing point for diverted milk. In addition, the merged order contains a procedure to deal with diversions of milk that would otherwise result in depooling a distributing plant.

The attached order provides for pooling producer milk under the order during the month in which it is picked up at the farm, even if such milk is not received at a plant until the following month. Under this procedure, such milk would be included in the responsible handler's end-of-month inventory and will be priced at the location of the plant where the milk is physically received in the following month. A uniform application of pooling milk in the month in which it is picked up at the farm will simplify accounting procedures and is consistent with the regulatory treatment of such milk in adjacent orders that also regulate handlers who will be operating plants under the merged order.

The merged order should continue to provide for the pooling of milk that is associated with the market but which may not be needed at fluid milk plants during certain days of the week or seasons of the year. The most efficient way of handling such milk is to allow it to be moved directly from the farm to nonpool plants for processing. Allowing milk to be diverted to plants other than where it would normally be received, either by a cooperative association or the pool plant operator, minimizes hauling and handling problems that may otherwise be associated with the marketing of milk that exceeds the need for milk at pool plants.

The diversion limitations proposed by AMPI, and which are adopted herein, are less restrictive than those of the current orders and are more reflective of current marketing conditions. In order for a dairy farmer's milk to be eligible for diversion to nonpool plants during the months of September through January, at least one day's production of milk must be received at a pool plant during each of these months. Such requirement recognizes the months of the year when supply/demand conditions are relatively tighter and assures that a producer's milk is eligible for use in fluid milk products. During other months, the milk of a producer need not be received at a pool plant.

In addition to the individual producer requirement, pool plant operators would be allowed to divert to nonpool plants a quantity of milk that does not exceed the total quantity of milk that is physically received at pool plants of the handler as producer milk. Cooperative associations would be able to divert a quantity of milk that does not exceed the quantity of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month. Such overall diversion limitations would apply during each month.

Any milk diverted in excess of the prescribed limits would not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that should not be producer milk. If the handler fails to make a designation, then milk diverted on the last day of the month, then the second-to-last day of the month, and so on, should be excluded until all diversions in excess of the prescribed limits are accounted for.

The merged order provides that milk may be diverted from pool plants to nonpool plants by both cooperative associations and the operator of the pool plant. With more than one handler diverting milk from the same plant, it is possible that a plant might not meet the order pooling standards. This could occur because diverted milk is considered to be a receipt of milk at the plant from which it is diverted. Consequently, the order should provide that the quantity of diverted milk that would cause a plant to lose its pooling status not be producer milk. Such excess diversions should be prorated among the diverting handlers.

All diverted milk should be priced at the location of the plant where the milk is physically received. The application of consistent pricing of milk at the plant of physical receipt is consistent with the requirement that the order establish prices that are uniform among handlers, subject to the location at which the milk is received.

2(b) *Classification of milk, class prices and other uniform provisions.* Each of the three orders being merged have the same classification plan. Such a uniform classification plan was implemented in these and most other orders on August 1, 1974. The need and basis for the implementation of uniform classification provisions is set forth in the Assistant Secretary's final decision issued on February 19, 1974, and published March 6, 1974 (39 FR 8712). In addition to providing for the uniform classification of milk according to use, the plan includes rules for determining the classification of milk that is moved from one plant to another and the procedure for allocating a handler's receipts of milk and milk products from various sources to the utilization of such receipts in each class.

The officially noticed classification decision also provided for a uniform butterfat differential to producers and definitions of "fluid milk product," "fluid cream product" and "filled milk." The fluid milk product definition was further amended on August 1, 1975, on the basis of a final decision issued on July 11, 1975, and published July 17, 1975 (40 FR 30119). The application of these uniform provisions will be continued under the merged order.

Following the issuance of the recommended decision, an emergency final decision was issued on November 9, 1990, and published in the **Federal Register** on November 19, 1990 (55 FR 48112) that changed the formula for computing butterfat differentials in all Federal orders. The uniform amendments to the three orders being merged were effective on December 28, 1990. The formula change lowered butterfat differentials and resulted in placing more of the value of milk on the skim milk portion and less on the butterfat. The revised formula also recognizes changes in both butter and skim milk prices. These uniform amendments are incorporated in the merged order.

Other provisions that are the same in each of the three orders and most other orders would also be continued under the merged order. These provisions concern the obligations of a partially regulated distributing plant and the minimum order class prices to handlers. Each of the three orders provides for the same basic formula price, which is the Class III price for the month, and the same Class II price. The Class II price as well as the definitions of "product prices" and the "basic Class II formula price," are based on a final decision issued July 8, 1981, and published on July 14, 1981 (46 FR 36151). The procedure for announcing and determining the Class II price was modified in the three orders being merged and 36 other orders on December 4, 1989, on the basis of a tentative decision issued on November 8, 1989, and published on November 15, 1989 (54 FR 47527). The final decision, issued on March 23, 1990, and the order amendments issued were unchanged from the tentative decision.

The determination of the Class I price for the three orders, as well as all other orders, is also the same and will be continued in the merged order. The announced Class I price will be the basic formula price for the second preceding month plus a fixed differential. The current Rio Grande

Valley order Class I differential of $2.35 will be continued as the announced Class I price under the merged order. Also, the $2.49 Class I differential that is currently applicable to plants regulated under the Lubbock-Plainview and Texas Panhandle orders will also be continued under the merged order in the form of location adjustments to the announced Class I price.

With the exception of the Class I price level and location adjustments, AMPI proposed a continuation of all those provisions that are uniform among a large number of orders and the three orders being merged. There was no opposition to a continued implementation of any of these uniform provisions or any testimony to consider a need to deviate from uniform procedures. There was also no opposition to or any proposed alternative to the method of determining the Class I price for the merged order. The only area of controversy concerned the intramarket and intermarket alignment of Class I pricing. The discussion of this issue, as well as the basis for continuing the current Class I differentials, is set forth under issue No. 3. Consequently, a continued application of the uniform provisions will not result in any change in regulation for currently regulated handlers.

2(c) *Distribution of proceeds to producers.* The merged order, as well as the three separate orders, provides for distributing among all producers who supply the market the total proceeds derived from the use of their milk by handlers. Essential to the operation of the order is the requirement that handlers report their total receipts and utilization of milk each month. The total value of all milk at the minimum order class prices is combined by the market administrator to compute the average or uniform price payable to producers. Handlers whose use value of milk exceeds the average use value for the market pay the difference into the producer-settlement fund that is maintained by the market administrator for distribution to handlers whose use value is less than the marketwide use value. Through this procedure, all producers who supply the market are able to share equally in the proceeds from the sale of all milk in all its uses. This concept of the payment procedure is continued in the merged order. Additional provisions that pertain to the dates when payment obligations to the market administrator and producers are required vary somewhat from the current orders. These modifications would not affect the total obligations required of handlers under the order at class prices for milk.

The major change from the current payment plans contained in the three orders that is incorporated in the merged order pertains to additional regulatory incentives for handlers to make prompt and timely payments to producers. This payment plan, which is currently operational in the adjacent Southwest Plains order, specifies that any handler who is more than three days late in meeting any payment obligation under the order is required to make all payments to the market administrator for three consecutive months. During such period, the market administrator makes payments directly to producers and cooperative associations as would otherwise be required of the handler.

AMPI testified that any handler who fails to make payments by the due dates specified is in violation of the order. However, AMPI also testified that it is often difficult to initiate and complete enforcement action in a timely manner to deal with late-payment issues.

AMPI testified that the Southwest Plains order payment plan has been successful in encouraging handlers to make payments on time. The plan establishes an economic incentive and a business practice motive to make timely payments. Any delinquent handler (one who is more than three days late in making any payment) is required to make payments to the market administrator. Thus, a delinquent handler forfeits the right to pay individual producers and cooperative associations for three consecutive months for milk receipts. Also, such payments to the market administrator are required to be made one day earlier than they would otherwise be due so that the market administrator is able to make the payments to producers on the due dates specified in the order.

The failure of a handler to make timely payments deprives dairy farmers of the use of their income and affects their ability to meet their economic obligations. Furthermore, late payments by a handler affects the uniformity of the application of the regulatory program among competing handlers. Those handlers who make payments in accordance with the order provisions are disadvantaged relative to handlers whose obligations are paid late.

The proposed payment plan should be adopted to promote timely payments by handlers. The plan will not have an impact on handlers who continue to make their payment obligations by the dates specified in the merged order.

The dates for payments under the order are predicated on receiving handlers' reports of their receipts and utilization of milk on the seventh day of the month. This is the same day on which reports are due under the current Texas Panhandle order and the adjacent Southwest Plains order that served as a model for the proposed payment plan. The uniform price is to be announced on the 12th day of the month, which is the same as the current date for the Rio Grande Valley order. Payments to the producer-settlement fund would be required on the 14th day of the month while payments from the producer-settlement fund to handlers would be due on the 15th of the month. The final payment by handlers to producers would be due on the 17th of the month while payments to a cooperative association would be due two days earlier. Such payment procedures and the dates for making payments are the same as those provided under the Southwest Plains order. The only deviation from the Southwest Plains order is that the uniform price announcement date is the 12th of the month rather than the 11th. The use of the 12th of the month, however, provides for the same two-day duration between the uniform price announcement and the date for making payments to the producer-settlement fund that exists under two of the orders being merged and an additional day from what the Rio Grande Valley order provides. All of these dates were proposed by AMPI and they were not opposed by any regulated handler.

The order should also provide for a partial payment to producers for milk delivered during the first 15 days of the month as is currently provided by each of the three orders being merged. The partial payment rate should be the uniform price for the preceding month as is provided by the Rio Grande Valley order. The partial payment should be due on the last day of the month as is currently required under the three orders being merged for milk received from producers.

AMPI proposed that the partial payment be due on the 25th day of the month for milk received from producers and two days earlier for milk received from cooperative associations. AMPI testified that the partial payment date should be earlier than the current dates to get money to producers at an earlier date.

For milk received by a handler from producers who are members of a cooperative association, the proposed partial payment date (23rd of the month) would be three days earlier than what is

provided under the Lubbock-Plainview and Texas Panhandle orders and three to six days earlier than what is provided by the Rio Grande Valley order. On the other hand, the proposed final payment date would be one to two days later than the dates provided by the current order. Thus, the proposed payment dates are somewhat in conflict with the stated purpose of earlier payments to producers. Also, AMPI, which represents virtually all the producers who supply the markets, already pays its members a partial payment on the 23rd and a final payment on the 12th or 13th of the month. Consequently, changing the partial payment date would not appear to have any significant effect in meeting the stated objective.

AMPI's proposal would compress the payment schedule to provide eight days between the final payment for the previous month and the partial payment for the current month. Providing for a partial payment at the end of the month would provide as few as 11 and as many as 14 days between the final and partial payments. Thus, the adopted partial payment date would seem to provide for a more even distribution of proceeds to producers and workload for handlers. Also, such partial and final payment dates would be identical to those of the Southwest Plains order and result in greater uniformity payment schedules throughout the region.

AMPI also proposed additional regulatory language to specify in greater detail the rate and manner for making payments to a cooperative association that is the handler of milk supplied to pool plants and for milk that is purchased by a handler from a pool plant operated by a cooperative association. Under the proposal, the partial payment would be at the uniform price for the previous month, although purchases from cooperative association pool plants could be adjusted by the butterfat differential for the previous month to better reflect the butterfat content of such purchases. The proposed final payment would be at the current month's blend price for milk purchased from a cooperative association handler and at class prices for milk purchased from a cooperative association pool plant. Such payment provisions are identical to those contained in the Southwest Plains order and should be equally appropriate for the merger order.

At the hearing, AMPI revised its proposal to distinguish between bulk fluid milk and bulk fluid cream products purchased from a cooperative association pool plant. AMPI suggested that the partial payment for bulk fluid cream products should be at the Class II price with a permitted adjustment for butterfat content.

The proposed modification would not change the total obligation for purchases from pool plants. Consequently, it does not appear necessary to complicate the payment provision to differentiate between purchases of bulk fluid milk and cream purchases from cooperative association pool plants. Such a distinction is not recognized in any of the three orders being merged or adjacent Federal order markets.

2(d) Administrative provisions. A number of administrative provisions that are contained in the three orders must of necessity be continued in the merged order. Also, the separate funds that have been accumulated under each of the orders to defray the cost of administration and providing marketing services to producers, as well as the producer-settlement fund reserves, should be consolidated under the merged order. Consolidation to these funds provides an effective and equitable way of avoiding an interruption of services and regulations in the area. Any liabilities of such funds under the current orders should be paid from the appropriate new fund under the merged order. Similarly any obligations that are due to the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

Each of the three orders provides for a maximum administrative assessment of five cents per hundredweight and maximum marketing service deduction of six cents per hundredweight. Such rates should be continued under the merger order. Both the administrative assessment (which is paid by handlers) and the marketing service assessment (which is paid by producers) are established at maximum rates that can be reduced as circumstances warrant. The producer-settlement fund reserve of each of the three orders is maintained by deducting not less than four cents nor more than five cents per hundredweight in the uniform price computation each month while one-half of the unobligated balance in such fund is added to the price computation each month. Such process is continued in the merged order although a procedure is established to allow for a reduction to the producer-settlement fund reserve. This is accomplished by specifying that no more than five cents can be deducted in the uniform price computation. This procedure, as well as the continuation of the current assessment rates and the consolidation of the funds mentioned previously, were proposed by AMPI and were not opposed.

A proposal by AMPI to establish a charge on overdue accounts under the merged order should also be adopted. Such a charge is currently applicable under the Lubbock-Plainview and Texas Panhandle orders. Under the merged order, such charge on any unpaid obligation of a handler should be increased by one percent. The charges should apply on the first day the payment is past due and on the same day of each succeeding month until the obligation is paid. Payments subject to the charge would be those due from handlers to the producer-settlement fund, to producers and cooperative associations, for other administration, for marketing services and for audit adjustments.

Any obligation that was determined at a date later than that prescribed by the order because of the handler's failure to submit a report to the market administrator when due should be considered to have been payable by the date it would have been under if the report had been filed when due. Also, the order provides that all late-payment charges shall accrue to the adminstrative expense fund.

A charge on overdue accounts is necessary to maintain a sufficient incentive for handlers to meet their financial obligations in accordance with the payment dates specified in the order Effective administration of the order cannot be maintained if funds are not made available on a timely basis to meet all financial obligations associated with the administration of the order and payments for milk received from producers and cooperative associations. Late payments by handlers disrupt the operation of the order, disrupt the financial obligations of other parties, and result in inequities among handlers. Although handlers who pay late are subject to enforcement proceedings, the late-payment charge, in conjunction with the payment provisions adopted herein, may serve to lessen the need for such actions.

AMPI proposed that any late-payment charges that are applied should accrue to the fund to which the payments apply. This aspect of the proposal, however, should not be adopted. Rather, all charges on overdue accounts should accrue to the administrative fund since it is this fund that is used by the market administrator to enforce the payment provisions of the order on all handlers.

3. *Location adjustments under the merged order and the Texas and Southwest Plains orders.* The location adjustment provisions of the merged

New Mexico-West Texas order should incorporate, for the most part, the pricing structure within the marketing area that currently exists under the three separate orders. The only pricing change that is necessary in the merged marketing area is the elimination of a minus 15-cent location adjustment in four eastern New Mexico counties that currently applies under the Rio Grande Valley order. No location adjustments should apply to milk that is priced under the merged order but which may be received at plants located outside the marketing area. Also, in order to recognize the creation of the merged order, conforming changes are necessary in the location adjustment provisions of the adjacent Southwest Plains and Texas orders. Both orders reference the three separate orders in their respective location adjustment provisions, and, thus, such provisions must be modified to reflect the marketing area consolidation and marketing area name change.

In conjunction with the 15-cent pricing change in eastern New Mexico, the Texas order Zone 1 Class I differential should be reduced by 12 cents per hundredweight. Such pricing change will reduce the entire price level for the Texas market since Class I prices paid by handlers and blend prices payable to producers from milk received at plants in all other pricing zones in the marketing area are specified as either plus or minus adjustments to the Zone 1 price. These pricing changes will result in reducing the difference in Class I prices between eastern New Mexico (Clovis) and the Texas market by 27 cents per hundredweight. Such pricing change will reflect the appropriate intermarket alignment of pricing that is necessary to recognize the cost of hauling milk from a common surplus production area to alternative outlets for Class I use. These pricing changes refine the west to east alignment of pricing that currently exists under the separate orders. In order to further recognize the increasing prices from west to east, a minus 21-cent location adjustment should be established in Zone 6 (San Angelo) of the Texas marketing area. Such zone is the westernmost zone in the marketing area and its western boundary is adjacent to the lower-priced eastern New Mexico production area.

The current Rio Grande Valley order utilities a zone pricing system for establishing location adjustments for Class I prices paid by handlers and blend prices payable to producers. The order specifies three pricing zones although only two price levels are provided. Zone 1, which is the base zone for announcing Class I prices to handlers and blend prices to producers, includes El Paso county, Texas and most of the New Mexico territory (20 counties) in the marketing area. Zone 1 includes the major population centers in the marketing area and all of the distributing plants that are currently regulated under the order are located in such zone. No location adjustment applies to milk received at plants in Zone 1. Thus, the Class I price is the basic formula price for the second preceding month plus a Class I differential of $2.35 per hundredweight.

Zone 2 includes San Juan County in New Mexico and the three southwestern Colorado counties that are in the marketing area. A minus 15-cent location adjustment, or a $2.20 Class I differential, applies to such area, although there were no longer any fully regulated plants located in the area at the time of the hearing.

A minus 15-cent location adjustment also applies to Zone 3 of the marketing area, which includes seven eastern New Mexico counties. The Gold Star plant at Clovis and the Roswell production area are located in this Zone. As previously stated, the Gold Star plant is currently regulated under the Texas order and a $2.20 Class I differential is applicable at such plant under the Texas order as well as under the Rio Grande Valley order.

The Lubbock-Plainview order currently provides for a $2.49 Class I differential and no location adjustment are applicable within the marketing area. The Texas Panhandle order also provides for a $2.49 Class I differential. The location adjustment provisions provide for reducing the Class I and blend prices by 1.5 cents per ten miles for plants that are located 100 miles or more from Amarillo. Such adjustment, however, is not applicable to any regulated plants. The Class I differentials for the two orders were increased to $2.49 effective May 1, 1986, as mandated by the Food Security Act of 1985. Prior to such date, the Lubbock-Plainview Class I differential was $2.42 and the Texas Panhandle Class I differential was $2.25.

The Texas order currently utilizes a pricing structure that provides for 13 pricing zones in the marketing area. Zone 1 (which includes the Dallas/Ft. Worth metropolitan area) is the basing point for announcing the Class I price to handlers and the blend price payable to producers each month. No location adjustment is applicable to milk received at plants in such zone, thus the order Class I differential of $3.28 is directly applicable in establishing monthly Class I prices. Monthly Class I and blend prices for milk received in all other zones are established by location adjustments to the Zone I price.

A minus 25-cent location adjustment applies to Zone 1A, which is northwest of Zone 1. Zones 2 and 6 are located east and west, respectively, to Zone 1 and currently no location adjustments are applied to milk received at plants in such zones. In effect, the $3.28 Class I differential is applicable in such zones and extends across the State of Texas from the western Louisiana border to the eastern New Mexico border. On the east the $3.28 Class I differential abuts with an identical differential under the Greater Louisiana order while on the west the $3.28 differential abuts with the $2.20 Class I differential that is applicable under the Rio Grande Valley order.

The current Texas order Class I differential was implemented on May 1, 1986, as a result of the 1985 Farm Bill and represents a 96-cent increase from the $2.32 Class I differential that existed previously. The previous Texas order Class I differential was three cents per hundredweight less than Rio Grande Valley order Zone I differential that was not modified by the 1985 Farm Bill. The significant change in the east-west price relationship, which currently provides for a $1.08 per hundredweight difference between the Texas order and eastern New Mexico Class I differentials ($3.28–2.20), is the focal point for the price changing proposals considered at this hearing. It is noted that the pricing issue was previously considered at a regional hearing that was held on proposals to amend the location adjustment provisions of these orders to conform with the Class I differentials mandated by the Food Security Act of 1985. On the basis of that hearing, the Zone 6 plus 25-cent location adjustment was eliminated. The final decision setting forth the reasons for this and other pricing changes was issued on October 30, 1986 (51 FR 40176).

The remaining zones in the Texas marketing area are south of Zones 1, 2, and 6. Plus location adjustments are applicable to milk received at plants in such zones. The purpose of the higher prices in the southern zones of the marketing area is to compensate producers for the economic service they provide to handlers by hauling milk from northern production areas to the deficit milk producing area in the south for fluid use. A detailed explanation for the need and purpose of this pricing structure is set forth in the previously noticed final decision.

Resolution of the pricing issue involves a consideration of both the

intramarket pricing structure for the merged marketing area as well as the intermarket pricing structure between the merged order and the Texas order. AMPI's location adjustment proposal was directed primarily towards the pricing structure within the merged marketing area. However, AMPI's proposed pricing change for the eastern New Mexico area would lessen the current price differences between Clovis and the Texas market. Handler proposals, on the other hand, focused primarily on the intermarket price relationship and were intended to reduce the price difference by a greater amount than would be provided by AMPI's proposal. Summaries of the various proposals, as well as the testimony presented as to the need and basis for the proposals, are as follows. Also, testimony in opposition to various aspects of the proposals, as well as testimony in opposition to any pricing change, is presented.

AMPI proposed that the zone pricing structure of the Rio Grande Valley order be extended to the merged marketing area, but with some price modifications. AMPI proposed that Zone 1 of the marketing area include El Paso County, Texas, and six southwestern New Mexico counties. For such zone AMPI proposed a $2.30 Class I differential, or five cents below the current price level applicable in the area. Zone 2 would include the same counties currently included in Zone II of the Rio Grande Valley order, with a minus location adjustment of 10 cents per hundredweight. Thus, the proposal would provide for the same price level that currently exists in such area and would reflect a Class I differential of $2.20.

All remaining territory in New Mexico would be included in Zone 3 with a plus five-cent location adjustment, resulting in a $2.35 Class I differential. This would result in maintaining the current price level in Albuquerque and increasing the price level at Clovis in eastern New Mexico by 15 cents per hundredweight. The proposal would also provide for including all remaining Texas territory in Zone 4 with a plus 14-cent location adjustment, or a $2.44 Class I differential. This would result in a 5-cent per hundredweight price decrease from the current price level at Amarillo and Lubbock.

AMPI testified that the 15-cent increase in eastern New Mexico is necessary to help bear the cost of hauling milk to the Gold Star plant at Clovis. AMPI testified that most of the milk supply for the plant originates in Chaves County (Roswell) and that the distance from the center of the production area to Clovis is about 100 to 110 miles. Thus, the implied hauling rate is about 1.5 cents per 10 miles. Also, AMPI testified that the nine-cent higher price at Lubbock, relative to Clovis, is necessary to reflect the additional 60-mile distance to haul milk to Lubbock from Roswell versus hauling the milk to Clovis. Such rate also equates to 1.5 cents per 10 miles.

AMPI also testified that the 1.5-cent rate was used because it is the rate for establishing location adjustments that is currently used under the three orders being merged. AMPI testified that actual hauling costs are in excess of 3.0 cents per hundredweight per 10 miles. In addition, AMPI testified that milk production in the Roswell area is utilized to supply milk to plants at Clovis and Lubbock and on occasion for plants at Amarillo and Albuquerque. Overall, AMPI testified that the pricing changes were intended to result in approximately the same amount of total dollars being paid to producers for milk under the merged order that exists currently under the three separate orders.

AMPI's proposed price increase at Clovis, to cover some of the cost of hauling milk from Roswell to Clovis, would result in reducing the difference between the Class I prices at Clovis and the Texas market by 15 cents per hundredweight. AMPI opposed all other proposals that would reduce the price difference between the two areas by greater amounts. AMPI testified that its proposed 93-cent price difference between Dallas and Clovis ($3.28 Class I differential at Dallas minus the proposed $2.35 Class I differential at Clovis) is essentially the same over the 425 miles between the two locations as the current price difference between Hillsboro, Kansas, and Dallas. AMPI also noted that for a plant located at a similar distance to the east of Dallas the Class I price would be seven cents higher than at Dallas. As a result, AMPI concluded that a number of different pricing relationships exist and that it would not be appropriate to establish handler prices on the basis of competitive prices that exist in their areas of distribution. Such prices, AMPI contends, should be based on the price level that is necessary to attract a supply of milk to plant locations for Class I use.

AMPI further argued that the current price relationship in the western and southern parts of the country are superior to the pricing alignment that existed prior to the May 1986 implementation of the Congressionally mandated Class I differentials. As a result, AMPI testified that any action to reduce the Texas order Class I differential would disrupt the improved price relationship between the Texas market and other Federal order markets. In addition, AMPI testified that any such price reduction would not be warranted in view of the supply/demand relationship exhibited for the Texas market.

The Dairy Products Institute of Texas (DPIT) proposed that the Class I price difference between Clovis and the Texas market should be reduced by 50 cents per hundredweight through a combination of a price increase at Clovis and a price decrease at Dallas. DPIT testified that the mandated Class I differentials destroyed the Class I price alignment that existed previously between the Texas and Rio Grande Valley orders. It argued that the price relationship that existed previously (Dallas was 12 cents higher than Clovis) was superior to its proposed pricing changes but that its proposal would alleviate some of the inequity that currently exists. DPIT testified that under the current pricing structure, the Class I price differences between Clovis and Texas order distributing plants at San Angelo, San Antonio and Corpus Christi reflect alignment rates of 3.8 cents, 3.0 cents, and 2.7 cents per hundredweight, respectively, over the distances involved. DPIT argues that such price differences are excessive and represent a signficant misalignment of prices. Under its proposal, DPIT testified that the price alignments would reflect a rate of about 2.0 cents per hundredweight between Closis and the three Texas locations.

DPIT testified that a misalignment of prices can have at least two different disruptive impacts on distributing plants. In the first instance, a plant may not be able to obtain a sufficient supply of milk if it is competing with other plants at which higher prices apply. In such case, the plant operator would have to increase the price it pays to obtain a milk supply. On the other hand, DPIT testified that a plant that has a sufficient milk supply may not be able to compete successfully in selling fluid milk products in competition with other plants whose procurement costs are significantly lower.

DPIT maintains that the statute authorizing milk orders requires that prices for milk be uniform among regulated handlers and that an administered pricing system should minimize any misalignment of prices that creates inequities among handlers or causes handlers to go out of business.

Basically, DPIT maintains that the present pricing structure is misaligned to the extent that competition among regulated handlers is inequitable and disorderly. It contends that operators of distributing plants in the Texas marketing area are unable to compete effectively with the Clovis distributing plant for sales of fluid milk products in the Texas marketing area because the minimum order Class I price that is applicable to the Clovis plant is substantially lower than the Class I prices that apply to plants in the Texas marketing area.

DPIT further testified that a price reduction is warranted for the Texas market. DPIT maintains that a price reduction is appropriate in view of the significant increase in milk production that has occurred in Texas. As a result of the production increase, DPIT testified that substantial quantities of Texas production must be hauled to distant manufacturing plants located outside Texas for surplus disposal. In addition, DPIT notes that a number of suspension actions have been taken in response to production increases to accommodate the marketing of Texas milk that is surplus to the needs of the market.

MorningStar Foods, Inc., and Hygeia Dairy Company supported the DPIT proposal to reduce the Class I price difference between eastern New Mexico and the Texas order by 50 cents per hundredweight. The two handlers, which account for seven distributing plants that are regulated under the Texas order and two nonpool plants at which regulated milk is received, also proposed location adjustment changes for areas within the Texas marketing area that are located north and east of Dallas. Such changes are conditioned on the extent to which the Texas order Class I differential is reduced in response to the DPIT proposal. For the area north of Dallas, which encompasses Zone 1A of the Texas marketing area (Burkburnett), the handlers proposed that the current minus location adjustment be revised to result in a Class I differential that continues to be one-half of the difference between the Dallas and Oklahoma City Class I differentials. For east Texas areas included in Zones 2 and 4 of the marketing area, the handlers proposed a price increase if the Dallas Class I differential is reduced by more than 20 cents. For each one-cent reduction beyond 20 cents, the handlers proposed that the Zone 2 and 4 plus location adjustments be increased by one cent. Also, for each one-cent drop in the Dallas Class I differential beyond 16 cents, the handlers proposed a plus one-cent location adjustment for a proposed Zone 8-A that would include Jefferson and Orange counties. The handlers testified that these location adjustment changes for east Texas locations are necessary to establish a reasonable price alignment between the prices established in such areas under the Texas order and the prices established in adjacent Louisiana territory under the Greater Louisiana order. These price modification proposals were also proposed and supported by Borden, Inc., which operates seven distributing plants that are regulated under the Texas order.

A witness for MorningStar and Hygeia testified that the current price difference between eastern New Mexico and Texas is excessive. As an example, the witness testified that the Clovis distributing plant has a $1.50 per hundredweight Class I price advantage over the MorningStar plant located at San Antonio. The witness testified that such price difference over the 500 miles between Clovis and San Antonio equates to a disadvantage of three cents per hundredweight per 10 miles.

The witness also testified that the Texas market is no longer a deficit market. The witness maintained that production increases in Texas have resulted in a surplus of production over the milk needs of the market. The witness noted that Texas order provides a transportation credit to handlers for costs incurred in hauling milk to plants outside Texas for surplus disposal. During the last half of December 1988 and June 1989, the witness noted that 28 and 35 million pounds of Texas production, respectively, qualified for the transportation credit.

Under these marketing conditions, the witness testified that there is no basis for the continuation of the current pricing structure that encourages the movement of packaged milk into the Texas marketing area from New Mexico. Basically, the witness maintained that current prices provide a competitive advantage to the distant Clovis plant over Texas plants while a surplus of milk production already exists in the Texas market.

The witness also supported a modification of AMPI's zoning proposal for the merged order. The modification would include Curry county (where the Gold Star plant at Clovis is located) and four other eastern New Mexico counties in the same pricing zone as Amarillo and Lubbock and at the same price level that currently exists for plants in these west Texas cities. Such a modification would result in a $2.49 Class I differential value being applicable at Clovis, a 29-cent increase from the current differential. The witness testified that this would result in including all directly competing fluid milk processing plants located in the Panhandle area and eastern New Mexico in the same pricing zone. Also, the witness testified that the distributing plants at these three locations form a triangle where all the plants are about 100 miles from each other. With a 29-cent increase at Clovis, the Texas order Class I differential would have to be decreased by 21 cents to establish the 50-cent pricing realignment.

The witness further testified that bulk raw milk can be hauled for about $1.60 per loaded mile. Such cost represents a hauling rate of about 3.3 cents per hundredweight per 10 miles for a 48,000-pound load. The witness testified that historically the cost of hauling packaged milk has exceeded the cost of hauling bulk milk. However, the witness maintained that this situation may no longer be true because of the advent of new distribution methods. The witness contended that the distribution of packaged fluid milk products in one-way corrugated boxes, with the availability of backhaul revenues, reduces hauling costs to one-half of the cost of hauling packaged milk in milk cases. Under these circumstances, the witness maintained that price differences should not exceed more than the two cents per hundredweight per 10 miles that would be provided by the DPIT proposal.

As previously stated, MorningStar, Hygeia and Borden, Inc., also proposed location adjustment changes for north and east Texas pricing zones to conform with the proposal to realign prices between eastern New Mexico and Texas. The handlers proposed that the minus location adjustment for Zone 1A (Burkburnett), which is north of the Dallas-Fort Worth base zone, continue to be one-half of the difference between the Class I differentials at Dallas and Oklahoma City. Currently, the Texas order provides for a minus 25-cent location adjustment for Zone 1A, which is about half of the 51-cent difference between the $2.77 Class I differential at Oklahoma City and the $3.28 Texas order Class I differential at Dallas. Thus, if the Dallas Class I differential were reduced by 20 cents, the handler proposed that the Zone 1A location adjustment be reduced to minus 15 cents.

The handlers also proposed location adjustment changes for Zones 2 and 4 of the Texas marketing area to maintain an alignment of pricing with the Greater Louisiana order if the Texas order Class

I differential were reduced by more tnan 20 cents. The handler proposed that for each one-cent drop of the Class I differential beyond 20 cents, the Zones 2 and 4 plus locational adjustments should be increased by one cent. In addition, the handlers proposed that a new Zone 8A, consisting of the east Texas counties of Jefferson and Orange, be established if the Texas order Class I differential were reduced by more than 16 cents. For each one-cent drop beyond 16 cents, the Zone 8A plus location adjustment would be increased by one cent. Currently, Zone 8 (Houston) has a plus 54-cent location adjustment. Thus, the handlers maintain that with a price drop of more than 16 cents, a price increase would be necessary in the eastern portion of Zone 8 to align prices with those established under the adjacent Greater Louisiana order.

Borden, Inc., which operates a substantial number of regulated distributing plants located in Texas and New Mexico, supported the DPIT proposal to realign prices between New Mexico and Texas. Borden testified that the Class I differentials established by the 1985 Farm Bill placed Texas handlers at a severe disadvantage in competing for fluid milk sales in the Texas marketing area with the Gold Star plant at Clovis. Borden noted that the mandated differentials resulted in changing the Class I differential at Albuquerque from three cents more than Dallas to 93 cents less than Dallas and that the differential at Clovis changed from 12 cents less than Dallas to $1.08 less than Dallas. Furthermore, Borden maintains that the plant at Clovis has a significant additional advantage over plants located in the Texas marketing area south of Dallas. For example, Borden testified that the differential at Clovis was changed from 54 cents less to $1.50 less than the differential at San Antonio, and that the differential at Clovis was changed from 78 cents less to $1.74 less than the differential at Corpus Christ.

Borden maintains that these price differences are so great that they created an incentive for a handler to locate a plant at Clovis and distribute packaged milk into the Texas marketing area in competition with Texas plants. Borden contends that such an incentive for west to east movements of milk is contrary to the flow of national Federal order pricing. It claims that a 50-cent change in price alignment is the minimum amount that is necessary to limit the current misalignment, but that there appears to be no reason why the differential at Clovis should be any less than the $3.28 Class I differential that is applicable at Dallas. Borden testified that it has lost a number of fluid milk accounts, had been unable to obtain a number of new accounts, or had to reduce prices because of Gold Star's ability to offer a lower price based on its milk procurement cost advantage.

Dean Foods Co., which operates at least one distributing plant under each of the orders (except the Texas Panhandle order) involved in this proceeding, supported AMPI's proposal to increase the Class I price at Clovis by 15 cents. Dean contends that there never was a reason for a lower Class I price at Clovis than at Albuquerque. Dean testified that an attempt was made to correct the pricing problem at Clovis at the regional hearing that was held to make the location adjustment provisions conform with the mandated Class I differentials. Dean noted that at that time (1986) the plant was regulated under the Rio Grande Valley order and was operated by Safeway. Dean testified that Safeway's distribution was confined to a smaller area and was limited to its own stores. Dean testified that marketing conditions have changed in that Gold Star's sales are not limited to its own stores and that its distribution area is extensive, as evidenced by the plant's regulation under the Texas order.

Dean testified that with a 15-cent increase at Clovis, the Texas order Class I differential should be decreased by 15 cents, resulting in a 30-cent price decrease between Texas and New Mexico. Dean testified that a price reduction of more than 15 cents for the Texas order would disrupt the pricing alignment between the Texas order and other orders to the north and east.

Although Dean supported a 30-cent change in price alignment between New Mexico and Texas, Dean also supported the proposed modification to include Amarillo, Clovis and Lubbock in the same price zone on the basis that handlers at such locations compete with each other for fluid milk sales. In addition, Dean offered a location adjustment modification at the hearing to provide for a minus 24-cent location adjustment for Zone 6 (San Angelo) of the Texas marketing area. Dean testified that such lower price for this westermost portion of the Texas marketing area is consistent with the west to east alignment of pricing indicated by other proposals.

Schepps-Foremost, which operates distributing plants under the Texas and Greater Louisiana orders, also testified to the misalignment of Class I prices between Clovis and Dallas that resulted from the Food Security Act of 1985. Although Schepps concurred with other handlers that the Texas order Class I price is too high, Schepps testified that the Texas order Class I differential should not be decreased because such action would result in a misalignment of pricing between Class I prices at Dallas and Shreveport under the Texas and Greater Louisiana orders, respectively. Schepps testified that Class I prices should be the same at Dallas and Shreveport, which is currently the case, since its plant at Shreveport distributes in the Texas marketing area and because at least eight Texas plants distribute in the Greater Louisiana marketing area. Schepps maintained that such plants should not be given a competitive advantage over Greater Louisiana plants in selling fluid milk products in that marketing area because of a pricing problem between Texas and New Mexico.

Schepps testified that the pricing problem should be rectified by increasing the Class I price at Clovis by 28 cents. Schepps maintained that such a price increase is justified in view of the distance that milk is shipped to supply the Clovis plant versus the distance that milk is shipped to supply plants in El Paso. Schepps testified that the weighted average distance that milk is hauled to Clovis is about 40 miles further than the weighted average hauling distance to plants in El Paso. On this basis, Schepps concludes that with a 3.3-cents per ten-mile hauling rate, the Class I price at Clovis should be about 13 cents higher than the current Rio Grande Valley order Zone 1 differential of $2.35, or $2.48 per hundredweight.

The Kroger Company, which operates one distributing plant under the Texas order, supported a reduction of the difference in the Class I differentials between eastern New Mexico and the Texas order. However, Kroger opposed any significant decrease in the Texas order Class I differential that would disrupt the Class I price alignment between the Texas order and other orders to the north and east.

Dairymen Inc. (DI), a cooperative association that represents producers under the Greater Louisiana order and other orders in the Southeast, opposed any lowering of prices in east Texas that would disrupt the alignment of pricing with the Greater Louisiana order and markets further to the east. DI testified that any change in the eastern Texas pricing should be limited to the price differences that existed prior to the 1985 Farm Bill. DI testified that any changes beyond such differences (nine cents between Tyler and Shreveport and one cent between Beaumont and Lake Charles) could result in a need for

further price adjustments in southeastern markets. In this regard, DI testified that there is no indication of any price alignment problems in the southeast and that current prices existing in the southeast are necessary to obtain adequate milk supplies.

Mid-America Dairymen, Inc., and Southern Milk Sales, cooperative associations that represent producers under the Texas and other orders, opposed any lowering of the Texas order Class I differential. The cooperatives testified that the basis for establishing prices under Federal orders should be limited to a consideration of the price levels necessary to attract a supply of raw milk to distributing plants. The cooperatives testified that on the basis of the 420-mile distance between Clovis and Dallas and a conservative bulk milk hauling cost of $1.65 per loaded mile, the cost of milk delivered to Dallas from Clovis is 36 cents more per hundredweight than the Dallas Class I differential. Thus, the cooperatives contend that there is no basis for lowering the Texas order Class I differential.

Farm Fresh, Inc., a handler who operates a distributing plant under the Southwest Plains order, filed a brief in opposition to proposals to lower the Texas order Class I differential. Farm Fresh contends that a lowering of the Texas price would disrupt the alignment of prices between the Texas order and other orders to the north and east. Farm Fresh contends that any such action would place Oklahoma handlers in a disadvantageous pricing position. Farm Fresh contends that plants to the north and east of Oklahoma would continue to have their prices reduced at 2.6 to 2.8 cents per 10 miles while Oklahoma plants would have a lesser price gradient to move packaged products south and west.

Gold Star Dairy, which operates a distributing plant at Little Rock under the Central Arkansas order in addition to the plant at Clovis, testified in opposition to the pricing proposals. Gold Star maintained that neither the price increase at Clovis nor the decrease to the Texas order Class I differential were justified. In fact, in its brief, Gold Star argued that the Clovis price should be reduced because of the production increases that have occurred in New Mexico while the Texas price should be increased because the market exhibits characteristics of a deficit market.

Gold Star testified that considerations involved in the acquisition of the Clovis plant included the proximity of the plant to New Mexico surplus production, the nature of its distribution system to supply distant warehouse customers, and the ability to serve such customers from a production area with transportation costs averaging about 3 cents per 10 miles for packaged milk, which is slightly less than bulk milk hauling costs. Nevertheless, Gold Star maintained that in no case are its transportation costs less than the current Federal order location adjustment allowances.

Gold Star testified that Class I prices under Federal orders are generally established on the basis of distance from major surplus milk producing areas to deficit markets. In this regard, Gold Star testified that the Class I price increases mandated by the 1985 Farm bill included Texas and Oklahoma, as well as other markets whose supply sources are directly or indirectly related to the surplus milk areas in Wisconsin. However, no increase was provided for New Mexico, which Gold Star contends was an apparent recognition of New Mexico as a secondary surplus production area for purposes of establishing minimum class prices under other orders.

In this regard, Gold Star testified that the price relationship between Clovis and Dallas is essentially the same as the price relationship between Springfield, Missouri, and Dallas. In addition, Gold Star contends that eastern New Mexico now represents a more efficient source of milk supplies for the Texas market than northern milk supplies in southwestern Missouri because farms in New Mexico are substantially larger than those in Missouri. Gold Star maintains that milk can be picked up at a single farm in New Mexico for shipment to Dallas plants and, thus, is a more efficient milk supply than milk collected from a number of farms in Missouri for shipment to Dallas.

In view of the production increases in New Mexico, and in view of the large size of the farms, Gold Star maintains that New Mexico now represents an alternative source of milk for the Texas market and possibly the Southwest Plains market. Furthermore, Gold Star maintains that the competition for New Mexico supplies is not significant since there is evidence of a substantial surplus of production that is hauled to distant plants in Texas, Oklahoma and Kansas for manufacturing.

Gold Star also testified that the cost of hauling bulk milk from Clovis to a number of Texas locations is greater than the difference between the Class I prices at Clovis and these Texas locations. On the basis of a 3.5 cent per hundredweight hauling cost, Gold Star concludes that at all Texas locations, except San Angelo, hauling costs exceed the Federal order minimum price differences. With respect to a similar comparison between Roswell and Texas locations, Gold Star concludes that it is only at San Angelo where a significant misalignment of pricing exists. At all other locations, Gold Star contends, the amount of unrecovered transportation costs (hauling costs in excess of order price differences) would be intensified by the price change proposals. Basically, Gold Star contends that based on bulk milk hauling costs, there is no basis for either increasing the price at Clovis or decreasing the Texas order price at any location except possibly at San Angelo. Since hauling costs exceed order price differences, Gold Star concludes that there is no misalignment of prices or any indication that the pricing changes are necessary to compensate producers for the economic service that they provide to various handlers by delivering milk to plants at different locations for fluid use.

The pricing issues involved in this proceeding are essentially the same as those considered at a regional hearing held in 1986 on proposals to modify location adjustments to align prices among Federal order markets to conform with the Class I differentials mandated by the Food Security Act of 1985. Such officially noticed final decision (51 FR 40176) for the Texas and six other Federal order markets clearly sets forth the economic concept and basis for establishing an appropriate alignment of pricing within and among Federal order markets. Basically, the Class I price level in any market is constrained by the cost of milk in alternative markets plus the cost of hauling bulk milk from such alternative sources of supply. In effect, the regulated minimum price level in each market, in the long run, cannot significantly exceed the cost of milk from an alternative lower-price production area. Such an alignment recognizes economic alternatives and results in the lower-price area being a basing point from which price constraints in other markets are established.

Such decision also explains that adjustments to Class I and blend prices are necessary to reflect the various locations at which milk may be received from producers. Such adjustments reflect the cost of hauling milk from where it is produced to where it is needed for use in fluid milk products. Location adjustments reflect the cost of the economic service provided by producers to handlers at varying locations. The value of the service provided varies in terms of both distance and the cost of hauling bulk milk. The extent to which there is adequate compensation for the value of

the services provided raises an issue of equity, both among producers and handlers.

In this context of Federal order pricing, the concept of price alignment involves a consideration of whether the price that applies at any plant or in any pricing zone is too high or too low relative to the prices that are established to attract milk to other locations. A resolution of the issue requires an identification of the primary production areas, the location of the processing plants, the alternative distances between production areas and plants, and the cost of hauling bulk milk.

As a further prelude to a resolution of the issue, it is necessary to point out that the issue of price alignment between New Mexico and Zone 6 of the Texas marketing area was also considered in the previously noticed final decision. On the basis of that hearing, a plus 25-cent location adjustment that applied in Zone 6 was eliminated to recognize a lower-cost alternative source of supply located to the west of San Angelo. A proposal to provide for a minus 25-cent location adjustment in Zone 6, however, was denied. Such denial was based on the fact that Zone 6 covers a large geographic areas that extends from New Mexico on the west to Zone 3 of the Texas order on the east. Also, a distributing plant, which no longer exists, was located in the eastern part of Zone 6 in Brown County adjacent to the heavy milk-producing counties in the Stephenville, Texas, area. Thus, the decision concluded that any price change in Zone 6 was limited by the proximity of such plant to the heavy milk-producing area of the Texas market. Consequently, the decision concluded that the elimination of the plus 25-cent location adjustment was as much of the pricing change that could be made at that time to reflect the changed price relationship between west Texas and the Rio Grande Valley order.

It is further noted that a proposal to establish a plus 15-cent location adjustment in eastern New Mexico was also denied in the same decision. Such price increase was denied because it would have been totally inconsistent with the intent of Congress (which mandated no price change for the Rio Grande Valley order), the supply/demand relationship within the marketing area, and the pricing structure of the market. The decision noted that the pricing structure of the Rio Grande Valley order reflected the need for milk to move from eastern New Mexico to consumption centers in central New Mexico and El Paso.

It is also noted that a previous proposal by Dean Foods, Borden and MorningStar to hold a hearing to change the pricing structure of the Rio Grande Valley order was denied. The proposal would have increased the Class I differential in Zone III of the marketing area (Clovis) to $2.49 (the same level as Amarillo and Lubbock) and decreased the Zone 1 Class I differential (Albuquerque and El Paso) to $2.28. Such proposal was denied for consideration at a hearing since it would be inconsistent with the purpose of location adjustments in that it would increase the price in a surplus area and decrease the price in an area of somewhat deficit production. The denial indicates that a price increase in southeastern New Mexico would inhibit the movement of milk from that area to plants located to the east and west that rely on such production for their supplies of milk for fluid use.

The proposals to consider the pricing issues, particularly the handler proposals to realign prices between eastern New Mexico and Texas, are based on two changes in marketing conditions. The primary change and area of concern among Texas handlers is the distribution of fluid milk products into the Texas marketing area from the Clovis plant since Gold Star began operating the facility. The second change in marketing conditions is the increase in milk production that has occurred in the Texas marketing area. Handlers basically contend that the price level for the Texas market could stand to be reduced to some extent, to assist in rectifying the price alignment problems, because of the increase in production that has occurred.

The handlers' position that a price reduction is justified for the Texas order because milk production has increased is somewhat in conflict with their position that milk prices should be increased in eastern New Mexico where milk production has also increased significantly. Milk production has increased in both Texas and New Mexico even though the Food Security Act of 1985 provided for no Class I price increase under the Rio Grande Valley order and a 96-cent increase under the Texas order. There is no information in the record of this proceeding to determine the extent to which price levels should be reduced, separate and apart from the price alignment issue, to establish a disincentive for milk production. A resolution of the price alignment issue, however, does require a 12-cent per hundredweight reduction of the Class I differential under the Texas order, as well as other pricing changes. In total, the pricing changes included herein will result in a lowering of returns to producers in the Texas and New Mexico areas. Although the price changes will lower returns to producers, and possibly production, such action is being taken for price alignment reasons and is not an attempt to determine the extent to which a disincentive for milk production may be necessary.

With respect to the price alignment issue, Texas handlers contend that they are not able to compete on an equitable basis with Gold Star for fluid milk sales in the Texas marketing area because of the substantially lower price that applies at Clovis relative to prices at Texas locations. They basically contend that prices are not uniform among competing handlers, as required by the Act, since the Clovis Class I price is $1.08 less than the base zone Texas price, with even greater price differences between Clovis and southern portions of the Texas marketing area.

In this regard, price uniformity among handlers does not mean that price levels must be the same at all plants that compete with each other for fluid milk sales. The Act specifically provides that prices shall be uniform as to all handlers, subject to a number of adjustments including the locations at which the delivery of milk is made to handlers. In order to have any meaning, such adjustments must be related to those prices that are necessary to attract raw milk to specific locations relative to other locations. Once a pricing structure is established to attract raw milk to where it is needed, handlers are then free to compete for sales in any area that they desire. This does not mean, however, that all handlers will have the same economic access to all sales areas.

The contention by handlers that price differences affect their ability to compete for sales is not, in itself, an appropriate basis for establishing location adjustments. As previously stated, location adjustments are based on those factors that are relevant to determine the prices that are necessary to attract raw milk to various plant locations. However, to the extent that location adjustments, or price differences, do not reflect the appropriate delivery incentives for producers, handlers may be unduly affected in either sales or procurement activities.

In this regard, there were a number of contentions expressed at the hearing and in briefs as to the possible reasons for which any one handler may lose, or may have lost, sales to other handlers. Sales of fluid milk products change

hands continuously for any number of reasons. Price, quality, product line, plant and distribution efficiency, type of distribution, and any number of other interacting factors may be reasons for sales shifts among plants. A differentiation of the probable impact of these variables on sales, however, is not necessary to resolve an identified raw milk price alignment problem. A significant misalignment of pricing, because of an improper recognition of factors justifying price differences, is a basis for pricing changes. Proper price alignment is necessary to assure that inequitable raw milk prices are not a significant factor in affecting the competitive conditions among regulated handlers.

The difference in Class I prices between Clovis and Dallas is essentially the same as the current price difference between Springfield, Missouri, and Dallas. With the distances between Dallas and Clovis and between Dallas and Springfield being similar, the price differences reflect alignment rates of a little more than 2.5 cents per 10 miles. It is on this basis that Gold Star contends that the price level at Dallas is not out of line with the price level at Clovis. However, the Texas order provides for plus location adjustments for areas south of Dallas. Such higher prices in southern portions of the Texas marketing area are necessary to provide incentives and compensate producers for hauling milk from the major, northern production area of the Texas market to deficit major consumption areas in the south, particularly Houston and San Antonio. As a result of the plus location adjustments to the south, as well as the east to west pricing that maintains the Texas order base zone price from Louisiana to New Mexico, it is in the southern and western portions of the Texas marketing area where prices are out of line with the eastern New Mexico price at Clovis. The magnitude of the problem is best illustrated by the $1.08 price drop at the New Mexico-Texas border. However, the actual degree of price misalignment is calculated by comparing the current Class I differential of $2.20 at Clovis plus the additional cost of hauling bulk milk from the Roswell production area to Texas locations with the current Texas order Class I differential at such locations.

The calculations to determine the necessary price alignment change are similar to those made by Gold Star. However, a hauling rate of 3.0 cents per 10 miles is used rather than the 3.5-cent rate used by Gold Star. The 3-cent rate is a conservative estimate of bulk milk hauling costs and is the same hauling rate used to establish the appropriate pricing differences between the major consumption centers of the Texas market. Testimony presented at the hearing with respect to actual hauling rates does not suggest that current bulk milk hauling costs are significantly different than those utilized to construct the Texas order pricing structure. Also, it is necessary to use a conservative hauling cost estimate to avoid the possibility of using overstated hauling costs that could provide incentives for uneconomic movements of milk for hauling profits. Furthermore, since the issue is one of alignment between New Mexico and Texas, it is appropriate to utilize the same hauling rate as reflected in the Texas market in the absence of testimony indicating a significantly different hauling cost.

In addition to using a lower hauling rate, the calculation procedure differs from Gold Star's procedure by using only the additional mileage that milk would have to be hauled to Texas locations from Roswell rather than being hauled to Clovis. Also, all mileages are those that are contained in the officially noticed Mileage Guide (Household Goods Carriers' Bureau, Mileage Guide No. 13, issued May 31, 1985).

Roswell represents a heavy milk-producing area from which milk is shipped to Clovis and Texas locations. As indicated under issue No. 1, milk production in eastern New Mexico is surplus to local needs and is currently shipped to plants regulated under five different Federal orders. Consequently, milk produced in the area is an actual and potential source of supply of fluid milk plants in New Mexico and Texas.

Clovis represents the nearest outlet for Roswell production and the cost of hauling milk the 111 miles is paid by the dairy farmer suppliers. In order for prices to be properly aligned, and to attract Roswell production to other locations, the price level at any other location would have to approximate the Clovis price level plus the additional cost of hauling the milk the additional mileage to such location. If the constructed price (Roswell price of $2.20 plus hauling) is less than the current price level at any location, then the current price level is too high, or misaligned, relative to the Roswell supply area. If the constructed price is greater than the current price, then Roswell does not represent an economical source of supply.

The additional distances that milk would have to be hauled from Roswell to Texas locations are as follows: San Angelo, 194 miles; Dallas, 371 miles; Austin, 404 miles; San Antonio, 409 miles; and Corpus Christic, 551 miles. The additional hauling costs plus the $2.20 Clovis Class I differential would result in the following Class I differentials; San Angelo, $2.80; Dallas, $3.34; Austin, $3.43; San Antonio, $3.43; and Corpus Christi, $3.88.

The constructed Class I differential for Dallas exceeds the current Texas order Class I differential by 6 cents per hundredweight. At all other locations the constructed differentials are less than the Texas order Class I differentials by the following amounts: San Angelo, 48 cents; Austin, 15 cents; San Antonio, 27 cents; and Corpus Christi, six cents.

The preceding price differences illustrate that the price misalignment with Clovis is greatest in the southern and southwestern portions of the Texas marketing area. Obviously, the greatest price differences exist for those portions of the Texas marketing area that are nearest to the lower-priced eastern New Mexico supply area. The more distant areas in eastern Texas are more insulated from the lower-priced Roswell production area by distance and the associated hauling costs. This is also true with respect to the northern portion of the Texas market because of the lower value of milk in that area.

The focal point for determining the magnitude of the price alignment problems must rest with the price comparison between Clovis and San Antonio. San Antonio in Zone 9 is the third most heavily populated pricing zone in the Texas marketing area. Such zone, in conjunction with Zone 1 (Dallas) and Zone 8 (Houston), is a major pricing point within the entire pricing structure of the Texas marketing area. Each of these heavily populated areas relies on the heavy northern Texas production areas for their sources of milk. The price relationship between these three zones is designed to attract milk from northern areas and to compensate producers for the varying services they provide in shipping milk to plants in each of the pricing zones. The prices in all other zones, except Zone 6 (San Angelo) and Zones 10, 11 and 12 that are south of San Antonio, are based to some extend on the prices necessary to attract milk to plants in Zones 1, 8 and 9 from north Texas production areas. Consequently, the price relationship between eastern New Mexico and the Texas market should be reduced by 27 cents rather than the 50-cent change that was proposed by a number of handlers. Any price alignment change of less than 27 cents would not resolve the pricing problem

between Clovis and San Antonio. On the other hand, a change of more than 27 cents (such as the 48-cent difference at San Angelo) would be excessive at San Antonio and at all other locations except San Angelo.

It is important to emphasize at this point that it would not be possible to restrict the pricing changes that are necessary only the southern and western portions of the Texas marketing area. Any limitation of pricing changes to such areas of the Texas marketing area (which were not proposed except for San Angelo) would make no economic sense and would disrupt the pricing structure of the Texas order. For example, a 27-cent price change only at San Antonio, on the basis of the Roswell production area, would result in a price at San Antonio that would not be sufficient to attract a supply of milk from the nearer north Texas production area. The current plus 42-cents location adjustment at San Antonio under the Texas order is necessary to attract milk from and compensate producers in the Erath County area for shipping milk the extra distance to San Antonio rather than shipping milk to plants in the Dallas/Fort Worth area. Basically, a lower price limited to San Antonio would provide a pricing structure to attract milk from 520 miles away in Roswell rather than from 205 miles away in Erath County. Such a pricing structure would not promote hauling efficiencies. Consequently, the 27-cent price change between eastern New Mexico and the Texas market can only be accomplished through a combinations of a price increase at Clovis and a price reduction for the Texas market by reducing the Base Zone Class I differential.

Gold Star filed exceptions to the previous findings and conclusions that identify the magnitude of the price alignment problem as well as the application of any required price reduction at San Antonio to the entire Texas market. Gold Star contends that the measure of price misalignment is overstated because the wrong supply area was used and because of the use of discounted mileages and transportation cost. Gold Star contends that Portales, New Mexico (Roosevelt County) should be used as an alternative supply area since it is nearer to both Clovis and San Antonio than is Roswell. Furthermore, Gold Star contends that the Portales milk supply would be transported through Clovis to most Texas outlets. Thus, Gold Star concludes that the alignment analysis should be based on the hauling distance from the plant of first receipt (Gold Star at Clovis) to other alternative outlets rather than on the additional miles from Roswell to alternative Texas outlets.

The exception indicates that the decision to align prices on the Roswell production area is inconsistent with administrative precedent established in aligning prices and establishing location adjustments under the Texas order. Gold Star indicates that the plus location adjustment at Houston was established on the basis of the nearest production area rather than a more distant production are even though more of the supply originated from the more distant area. On the basis of the nearer Portales area, Gold Star concludes that the price misalignment at San Antonio is about five cents per hundredweight rather than 27 cents. Also, Gold Star contends that the price alignment analysis results in decreasing the price in a deficit area and increasing the price in a surplus area which is inconsistent with the precedent to establish a pricing incentive to move milk to consumption centers that are deficit milk producing areas.

The exceptions filed by Gold Star miss the major economic factors that are controlling in resolving the price alignment issue. Also, the resulting price increase in eastern New Mexico and price decrease in Texas is not inconsistent with the purpose of location adjustments. It is only the magnitude of the price difference that is at issue. The 27-cent price change results in a Class I price at San Antonio that is $1.23 rather than $1.50 per hundredweight higher than the price at Clovis. Thus, an appropriate pricing incentive is provided. Also, the use of Portales as a supply area makes no economic sense since its use would result in an excessive Class I price at San Antonio relative to a less costly supply of milk that is available in Roswell Despite the fact that Roswell is slightly further from San Antonio than is Portales.

The record clearly establishes that a substantial supply of milk is available in the Roswell area and that such milk is shipped to a number of distant locations for both fluid and surplus uses. In effect, Roswell serves as a basing point and establishes a pricing constraint at alternative outlets. In addition, Clovis represents the nearest fluid milk outlet for the Roswell supply and, all other factors being equal, would represent the preferred outlet for Roswell production in terms of distance and hauling cost. Consequently, in order to be indifferent to supplying alternative outlets, only the additional mileages to supply such outlets rather than supplying Clovis, need be considered to establish an appropriate alignment of prices.

The concept of price alignment among orders involves a consideration of differences in minimum Class I prices, rather than blend prices, for reasons that are set forth under this issue as well as under issue 2(a) that deals with the regulatory treatment of distributing plants that met the pooling standards of more than one order. It is basically impossible to align blend prices among orders since such prices fluctuate independently from month to month and reflect any number of variables that affect the supply of and demand for milk and dairy products. Also, significant blend price differences provide an economic signal for possible shifts in supplies among markets.

In terms of the Class I prices that currently exist at different locations, the degree to which various locations would represent the preferred outlets for Roswell production is represented by the Class I differential minus hauling costs. Under the current Class I pricing structure, San Angelo, San Antonio and Austin, in that order, would be the preferred outlets even though they are substantially further from Roswell than is Clovis. In fact, Clovis would be one of the least preferred outlets even though it is the nearest of the relevant outlets for Roswell production. Furthermore, even more distant locations such as Corpus Christi and Victoria, Texas, would be more preferred as outlets than Clovis. Such a pricing structure makes no economic sense. In contrast, the pricing structure adopted herein would result in Clovis, San Angelo and San Antonio being equally preferred as the primary outlets, followed by Lubbock, Austin and Amarillo. Such an alignment of class I prices is far superior to the current price structure since it recognizes to a better degree those areas that would be expected to be the most economical outlets for the Roswell milk supply.

Gold Star contends in its exceptions that the recommended decision speculates that price reduction limited to San Antonio would create an incentive to attract milk from Roswell rather than from Erath County. Gold Star contends that this is not the case because transportation costs are greater than the 3-cent alignment rate and because no such supply changes have occurred under the current pricing structure. Furthermore, Gold Star contends that there are ample supplies of Texas milk that are nearer to San Antonio and that milk from the heavy north Texas supply area moves to a

number of zones in the Texas marketing area where different prices apply.

This decision concludes that a 27-cent price reduction limited to San Antonio would in fact represent a Class I price alignment that favors the Roswell production area over the Erath County production area. However, no where in this decision is it inferred or implied that any supply shifts would or should be made under either the current or adopted pricing structure. Milk from any production area is free to move to any plant location at any time. The question at issue, however, is what minimum value should be associated with milk delivered to one location versus some other location under an administered pricing structure. This concept of price alignment is based simply on the different costs that would be associated with hauling milk to alternative outlets. Under an administered pricing structure it is necessary to establish a logical and rational price relationship that recognizes economical alternatives. Otherwise, inequities are created among both buyers and sellers of raw milk.

For example, it is obvious that milk from the heavy north Texas production area is shipped to plants in Zones 1, 8 and 9 and other pricing zones of the Texas marketing area. However, the distances and costs of hauling milk from this major production area to the alternative outlets varies substantially. If the San Antonio price were reduced, it would be out of line with the prices established in the two other major consumption centers of the market. Thus, there would be inequities among handlers in that same handlers would be paying a greater proportion of the cost of hauling milk to their location than the San Antonio handlers would pay for milk hauled to their location. Also, producers supplying the other pricing zones would receive a price that better reflects the value of the economic service they provide to handlers while those producers supplying San Antonio would relieve a lesser proportion of the value of the service that they provide. Thus, there would be a price incentive for north Texas milk to be supplied to other than San Antonio. Likewise, as previously concluded, a price reduction limited to San Antonio would create a price incentive that favors the distant Roswell production area over the nearer north Texas milk supply. As a result, it is necessary to align Class I prices that increase from west to east in conjunction with the alignment of Class I prices that increase from north to south in the Texas marketing area. To do otherwise would result in creating a new price alignment problem while attempting to solve another.

The 3-cent per 10-mile hauling rate is the appropriate hauling cost to align Class I prices rather than some higher rate as suggested by Gold Star and AMPI in exceptions. The record of the proceeding identifies hauling costs in the same range as those costs identified in the 1986 final decision on the regional pricing proceeding to align prices in the Texas marketing area. Thus, as previously concluded, there is no basis from which to conclude that a different rate should be used. It is noted that such rate is a conservative estimate of hauling costs. However, there are sufficient reasons for using a conservative rate as previously set forth. In addition, the use of such a rate is necessary to align prices from west to east on the same basis that prices are aligned from north to south in the Texas marketing area.

In this regard, Southern Foods Group (SFG) in its exceptions suggested that a lower rate should be used (such as 2.7 cents) which would result in reducing the difference between eastern New Mexico and Texas class I prices by an additional 18 cents. SFG contends that a lower rate would be reasonable in that the Texas order currently specifies a 2.2-cent rate for establishing location adjustments at very distant locations. The use of such a lower rate, however, would be inappropriate in view of the hauling costs identified on the record and for reasons previously set forth.

In addition to SFG's contention that the price difference should be increased, exceptions filed by Borden reiterated the claim that the proposed 50-cent price change between eastern New Mexico and Texas should be adopted. On the other hand, AMPI filed exceptions to the method used to determine the magnitude of the price alignment problem between eastern New Mexico and Texas and contends that the 15-cent price change is all that is necessary to resolve the problem. AMPI contends that the analysis is inappropriate since it was not proposed by any interested party.

In this regard the analysis represents the conclusion that is based upon the relevant data in the record. Such analysis is consistent with the application of location adjustments which identify the different values associated with bulk milk delivered to alternative outlets. The analysis concludes that there is a 27-cent price alignment problem contrary to the claims by interested parties involved in the proceeding to change the price difference between the two areas by greater or lesser amounts.

The Class I price at Clovis should be increased by 15 cents per hundredweight as proposed by AMPI. As a result of the increased volume of milk that is processed at the plant, the supply source for the Gold Star plant now extends to the Roswell production area. The higher price will compensate producers for a greater proportion of the hauling cost that they incur in shipping milk over the 111 miles from Roswell to Clovis. The expansion of the procurement area to obtain sufficient supplies of milk for the plant indicates that producers are providing a service of greater value to Gold Star than was previously provided by producers when sufficient supplies of milk were available nearer to Clovis than Roswell.

In this regard, there is some merit to the testimony presented by Schepps-Foremost which indicates that the weighted average hauling distance to supply Gold Star at Clovis is greater than the average hauling distances involved in supplying distributing plants at either Albuquerque or El Paso. On this basis, it would appear to be reasonable to conclude that the class I price at Clovis should be higher, rather than lower, than the current price levels at either Albuquerque or El Paso.

Establishing a higher price at Clovis that would be about the same as the current price level at plants to the east would provide for no price difference to recognize the additional hauling costs incurred in shipping milk beyond Clovis to either Amarillo or Lubbock. There is currently a 29-cent higher Class I price at Amarillo and Lubbock than at Clovis. These cities are 104 and 65 miles further, respectively, from the Roswell supply area than is Clovis. Consequently, the argument by handlers to include the three cities in the same pricing zone because plants at these locations compete for fluid milk sales is irrelevant in view of the different distances that such cities are from the Roswell supply area. Milk in the Roswell production area continues to be necessary to supply the fluid milk needs at Lubbock, and to a lesser extent, Amarillo. Thus, the price increase at Clovis should be limited to 15 cents and the current price levels should be maintained at Amarillo and Lubbock to provide an additional 14 cents to cover a portion of the extra hauling cost to such locations. As a result, the proposal to reduce the Class I price at Amarillo and Lubbock is denied since a price reduction would be contrary to the west to east price increase to reflect additional hauling costs.

Gold Star filed exceptions to the conclusion to increase the Class I price

at Clovis by 15 cents. Gold Star contends that it is not necessary for the plant to obtain milk supplies from the Roswell area since Gold Star maintains that production increases in the nearer Portales area would be sufficient to supply the increased needs of the Clovis plant. On this basis Gold Star concludes that the increase in the supply of milk for Clovis that originates in Roswell is a function of the needs of Roswell producers and the supply arrangements made by AMPI rather than a function of the needs of the plant. As a result, Gold Star concludes that the expansion of the Clovis plant resulted in transportation savings to AMPI since such milk no longer had to be hauled to more distant outlets. In effect, Gold Star contends that the existence of the plant results in a service of economic value to producers rather than the plant being a beneficiary of a service of economic value provided by producers who incur the cost of hauling milk to the plant. Gold Star concludes that the price at Clovis does not need to be increased because milk is being made available because of a lack of alternative outlets and that sufficient supplies of milk are likely to continue to be made available.

It is obvious that if the Gold Star plant did not exist, milk would have to be hauled to alternative outlets. However, there is no basis from which it can be concluded that a reduction in hauling distance (or hauling cost) by itself automatically results in a benefit to producers who have the opportunity to supply any location. The issue of price alignment involves a consideration of differences in prices at different locations relative to a common supply area. Thus, both the price of milk and the additional hauling cost must be considered. The implication of Gold Star's exceptions is that since the Clovis plant is the nearest outlet, and a lesser hauling cost will be incurred to supply it rather than other plants, producers need not be compensated to a greater degree for the service they provide by shipping milk to Clovis. Such a conclusion side steps the equity issue among producers in a common production area who supply the Clovis plant versus those who supply other plants and among handlers who are required to pay a greater share of the hauling and delivery service versus those who pay a lesser share of such service, such as Gold Star at Clovis.

Gold Star's exception concludes that it would be more economical for Roswell production to be shipped to Clovis rather than to Oklahoma City under the current pricing structure since a greater proportion of the hauling cost would be covered by the Class I price at Clovis than the Class I price at Oklahoma City. It is primarily on this basis that the exception concludes that the Clovis plant provides a service to producers.

Such a comparison makes no sense and does not support Gold Star's conclusion. This decision concludes that the price alignment problem exists between Clovis and the southern and western portions of the Texas marketing area. There is no identification of a misalignment with Dallas or more northern locations. Consequently, Gold Star's comparison is between two relatively uneconomical movements of milk under the current pricing structure. Since one uneconomic movement would be preferred over the other, Gold Star concludes that a benefit accrues to producers.

Although the shipment of milk from Roswell to Clovis would be preferred over shipment to Oklahoma City, it does not support Gold Star's conclusion that there is no pricing problem at Clovis or that producers should not be compensated for supplying the Clovis plant. As previously stated, the preferred outlets for Roswell production would include a number of Texas locations that are substantially further from Roswell than Clovis and which are also further from Roswell than is Oklahoma City. In addition, even the milk in the Portales area to which Gold Star refers would have a preference to be shipped to San Antonio rather than to the nearby Clovis plant. All this illustrates is the magnitude of the current price alignment problem that would be compounded by a price decrease at Clovis suggested by Gold Star. It does not specifically address the price level at Clovis.

With respect to this issue, the record clearly indicates that the supply area for the Clovis plant extends to Roswell. The proposed 15-cent price increase is reasonable in view of the increased distance that milk is shipped to supply the plant as Roswell is about 100 miles further from Clovis than is Portales. In fact, as previously stated, there is also merit to the proposal for a greater increase in view of the comparable distances that milk is shipped to supply other plants in the current Rio Grande Valley marketing area. However, other pricing constraints place a limitation on a further increase at this time.

Gold Star's exception expresses frustration over the movements of milk that are directed by AMPI. Gold Star questions why nearby milk is moved past Clovis to Oklahoma City while further supplies of milk from Roswell is shipped to Clovis.

Such movements of milk were addressed by AMPI as "stair-stepping" movements to minimize total transportation costs. Basically, such movements illustrate that milk is free to move to any outlet at any time. The pricing structure adopted herein, however, does not recognize every actual or potential movement of milk that may occur. The pricing structure is based on economic alternatives that results in a greater incentive for milk to be shipped to Clovis relative to other locations.

SFG filed exceptions to the conclusion to limit the price increase at Clovis to 15 cents. SFG contends that the price level at Clovis should be higher than the price at El Paso and Albuquerque and that the prices at Amarillo and Lubbock could be increased to reflect the additional cost to haul milk to such locations rather than Clovis. In this regard, any price increase at Amarillo or Lubbock is beyond the scope of the proposals considered at the hearing. The only proposals that applied to these locations concerned price reductions. Consequently, the current prices at these two locations provide a constraint to the price increase at Clovis that can be made on the basis of this record.

Although the Class I price should be increased at Clovis, such increase should not be applied to the three southeastern New Mexico counties of Chaves (Roswell), Eddy and Lea, as was proposed by AMPI. Although there are currently no fully regulated plants in these counties, the Roswell production area should not be included in the same pricing zone as Clovis. Since the principal issue is the additional price that is necessary to compensate for some of the hauling cost to Clovis, the production area should continue to be priced at a lower level. Thus, a minus 15-cent location adjustment should continue to apply in this area.

The proposal to lower the Class I price at El Paso by five cents per hundredweight also should not be adopted. The only reason presented by AMPI for such a reduction (as well as the reduction at Amarillo and Lubbock) was the objective to offset the price increase at Clovis. As previously stated, the objective of AMPI's pricing proposals for the merged order was to maintain about the same overall level of returns to dairy farmers as currently exists under the three separate orders. This objective will not be attained under the merged order. The only pricing change that is necessary is the price increase at Clovis to cover more of the

hauling cost incurred in moving milk greater distances from Roswell to meet the fluid milk needs of the Clovis distributing plant. However, on a broader basis, overall returns to producers will be reduced in the Texas-New Mexico region because of the reduction to the Texas order Class I differential to reflect the price alignment problem.

The price increase at Clovis will result in all of the major distributing plants in New Mexico and El Paso being subject to the same minimum order Class I price. Such pricing change recognizes that it is no longer necessary to maintain a pricing structure in New Mexico that encourages milk from the southeastern New Mexico production area to move south to El Paso or west to Albuquerque as well as to the east. Although the Roswell production area will be included in the lowest price zone and milk from that area will be able to be moved in all directions as needed, the pricing change recognizes the primary need for such milk to move north and east.

The prices that are necessary to compensate producers for hauling services that they provide to handlers has been considered in terms of differences in Class I prices that are paid by handlers. The location adjustments to Class I prices are the same adjustments that are applicable to blend prices that are payable to producers. However, an analysis of the differences in blend prices between orders at specific locations as calculated by Gold Star in considering whether location adjustment changes may be necessary was not relied on in this decision. As stated under a previous issue, the blend price that may result under the merged order is not known. Furthermore, a market's blend price is a measure of a market's supply/demand situation at a given point in time that is a response to any number of factors that affect the supply of and demand for milk and dairy products. A blend price comparison among markets which merely illustrates different varying supply/demand relationships among markets is not in itself a sufficient basis to modify or not modify location adjustments.

The merged New Mexico-West Texas order should not provide for any location adjustments on milk received at plants located outside the marketing area. As a result, it is also not necessary to provide for location adjustment credits for milk that may be transferred from supply plants to distributing plants for Class I use. Such credits, which are intended to prevent a lowering of returns to producers, are unnecessary because any milk received from distant sources would be priced at the same level as milk received in Zone 1 of the marketing area.

AMPI proposed that the location adjustments for distributing plants located outside the marketing area be equal to the differences between the merged order's Class I differential and the price established at the plant by the Federal order regulating milk marketing in the area of such plant. The concept of the proposal is that the prices that are established in other Federal orders are those prices that are necessary to attract sufficient supplies of milk to any plant location. Thus, the value of milk at any distant plant that may become regulated under the merged order should not change as a result of a regulatory change.

The Class I price level for the New Mexico-West Texas order is significantly lower than the Class I prices that are provided in all surrounding Federal milk orders. Consequently, the proposal would result in establishing plus location adjustments for milk received at plants that are located outside the marketing area. In this regard, AMPI suggested that such adjustments should be applied to distributing plants but not to supply plants or to milk that is diverted from the New Mexico-West Texas order to distant plants for surplus disposal. Establishing higher prices outside the marketing area would not provide an incentive for distant supply plants to ship milk to distributing plants for Class I use. Also, milk that may be diverted to distant plants would be worth more than milk received at plants in the marketing area for fluid use.

In view of the pricing structure in the region, it is not possible to establish a lower value of milk at distant locations relative to the marketing area and also recognize the greater value of milk established under surrounding Federal order markets. Consequently, no location adjustments should be established under the New Mexico-West Texas order for milk received at plants located outside the marketing area.

The Texas order Class I differential should be reduced by 12 cents, from $3.28 to $3.16 per hundredweight. The reduction is necessary to incorporate the 27-cent pricing change between eastern New Mexico and the Texas order. As previously stated, this pricing change is necessary to reflect an appropriate alignment of pricing between the orders on the basis of the alternative costs of hauling bulk milk from the Roswell production area to alternative plant outlets for fluid use. The 12-cent reduction would apply throughout the Texas marketing area and would result in Class I differential values of $3.16, $3.58, and $3.82 at San Angelo, San Antonio and Corpus Christi, respectively. At San Antonio, the focal point for determining the appropriate price alignment on the basis of the three cents per 10-mile bulk milk hauling cost, the $1.23 price difference between Clovis and San Antonio ($3.58–$2.35) would reflect an alignment rate of 2.46 cents per 10 miles over the 494 miles between the two locations. At Corpus Christi, the 12-cent price drop would reflect a 2.3-cent per 10-mile alignment rate with Clovis over the 636 miles. Thus, a constant price drop reflects a lesser alignment rate as distance from Clovis increases. Also, at San Angelo, the 81-cent price difference from Clovis would reflect a 2.79-cent per 10-mile alignment rate over the 282 miles from Clovis.

Because of its proximity to Roswell, an additional price reduction is necessary at San Angelo as proposed by Dean and as recognized by other hearing participants. As previously calculated, the additional cost of hauling bulk milk from Roswell to San Angelo versus hauling milk to Clovis results in a Class I differential value at San Angelo that is 48 cents below the current Texas order Class I price at San Angelo. As a result of the 27-cent change in the price relationship between Clovis and the Texas market, a further reduction of 21 cents at San Angelo is necessary to reflect the appropriate value of milk delivered to San Angelo relative to the Roswell supply area.

SFG, Hygeia and Borden filed exceptions to the application of a minus 21-cent location adjustment for Zone 6. All three handlers indicated that some minus location adjustment is necessary but contend that the minus 21-cent location adjustment is too much of a pricing change and results in creating a price alignment problem between San Angelo and San Antonio. The handlers maintain that the 63-cent price difference between San Angelo and San Antonio, which is the result of the minus 21-cent and plus 42-cent location adjustments at San Angelo and San Antonio, should be reduced.

SFG maintains that price difference between San Angelo and San Antonio should be reduced to 50 cents. Such price difference would result from the application of a lower hauling rate that would require an additional 13-cent reduction of the Texas order Class I differential. With such a further reduction, SFG maintains that only a

minus eight-cent location adjustment would be necessary at San Angelo to result in the $2.95 Class I differential value at San Angelo.

The problem with SFG's approach is that it would rely on the three-cent hauling cost to establish a price level at San Angelo relative to the Roswell supply area and a lesser hauling rate to align prices between eastern New Mexico and the Texas market. Such a procedure is inconsistent and also relies on a lower hauling cost that is not acceptable for reasons previously set forth.

Hygeia suggested that the minus 21-cent location adjustment should be reduced to minus 10 cents, which would result in a 52-cent difference between San Angelo and San Antonio. Borden suggested a minus 12-cent location adjustment, or a 54-cent price difference between the two cities.

Hygeia contends that the 2.46-cent alignment rate between Clovis and San Antonio that results from the recommended pricing structure should also be used between Clovis and San Angelo. Such a rate would result in a 71-cent higher price at San Angelo than at Clovis or a $3.06 Class I differential value. This would require a minus 10-cent location adjustment from the Texas order Zone I Class I price. Hygeia also argues that a 21-cent location adjustment for Zone 6 would result in a 36-cent price difference between the eastern border of Zone 6 and Zone 3 where a plus 15-cent location adjustment applies. If a plant was located there, Hygeia argues that a substantial misalignment of pricing would exist.

Borden, as well as SFG, contends that the recommended pricing structure does not recognize that the San Angelo plant obtains its milk supply from the Stephenville area rather than from Roswell. In this regard, Borden points out that San Angelo is about 40 miles closer to the Stephenville supply area than is San Antonio. Borden recognizes that a 12-cent lower price at San Angelo than at San Antonio based on the Stephenville supply area would result in a higher price at San Angelo than at Dallas. However, Borden argues that some compromise between the Stephenville and Roswell supply area is necessary at San Angelo and that this would be accomplished by applying a minus 12-cent location adjustment at San Angelo.

The views expressed by these handlers represent a desire to modify the price relationship between San Angelo and San Antonio. However, the reasons provided for altering this price relationship fail to recognize the importance of the Roswell production in establishing a price constraint in other areas, particularly at San Angelo and San Antonio. Basically, the handlers would recognize a pricing constraint at San Antonio but not at San Angelo. Such a pricing constraint would be inconsistent and would result in a price at San Angelo that would be higher than necessary to reflect the appropriate value of milk delivered to San Angelo relative to the Roswell supply area. In addition, the concerns expressed towards potential pricing problems between Zone 6 and other pricing zones, as well as reliance on the Stephenville production area, are hereinafter addressed. Consequently, the requests to further modify the price relationship between San Angelo and San Antonio are denied.

It is noted that a 21-cent reduction at San Angelo will no longer result in a price that will be competitive to attract milk to San Angelo from the heavy milk-producing areas of the Texas marketing area around Erath County. Obviously, in order to attract milk from such an area that is east of San Angelo, the price at San Angelo would have to be higher, rather than lower, than prices that exist to the east of San Angelo. However, the application of a higher price, or even the application of the same price at San Angelo as at Dallas that currently applies, does not recognize the lower value of milk that is available to the west in New Mexico. It is the New Mexico supply of milk with its lower value that must be recognized in establishing the value of milk delivered to San Angelo.

It is also noted that Zone 6 of the Texas marketing area covers a large geographic area although only the San Angelo plant currently exists in the area. Consequently, the minus 21-cent location adjustment for Zone 6 that is necessary at the San Angelo location is not necessarily representative of the value of milk delivered to any other potential plant location in this zone.

The recommended decision concluded that the minus location adjustment for Zone 1A of the Texas marketing area should be changed to continue to reflect one-half of the difference between the Texas and Southwest Plains Class I differentials. As a result the recommended decision concluded that the minus 25-cent location adjustment should be reduced to minus 19 cents, about one-half of the established 39-cent difference between the Texas and Southwest Plains order Class I differentials. Such a change would recognize the north-to-south alignment of pricing between the two orders.

Preston Dairy, a handler who operates a fluid milk plant near Wichita Falls in Zone 1A, filed exceptions to the location adjustment change. Preston Dairy indicates that the handlers who proposed the pricing change testified to a desire to maintain the adjustment at one-half of the difference between Oklahoma City and Dallas but offered no testimony concerning the existence of economic or marketing problems that would require such a change.

The handlers who proposed the location adjustment change relied solely on the price alignment change that might result from any price reduction at Dallas. In this regard the location adjustment for Zone 1A was changed from minus 12 cents to minus 25 cents on the basis of the regional hearing that was held in 1986 on proposals to modify location adjustments to align prices among Federal order markets to conform with the Class I differentials mandated by the Food Security Act of 1985. The officially noted final decision concluded that the location adjustment change was necessary because of the increase in the difference between the Texas and Southwest Plains order Class I differentials. The decision also notes that the mandated price increase at Dallas resulted in a 79-cent higher price than at Lubbock and Amarillo which reflected an alignment rate of 2.5 cents per hundredweight per 10 miles between Lubbock and Dallas and a rate of 2.2 cents between Amarillo and Dallas. The decision also noted that the proposed minus 25-cent location adjustment for Zone 1A provided for only a 1.8-cent rate between Wichita Falls and Dallas. Thus, the decision concluded that the 25-cent location adjustment provided for a better price relationship than the 12-cent location adjustment. As a result, the Zone 1A location adjustment was established not only on a north/south price alignment basis, but also included the relationships between each of the cities of Lubbock, Amarillo and Wichita Falls with Dallas as well as between Oklahoma City and Dallas.

In this connection, the 12-cent price decrease at Dallas results in about a 1.9-cent alignment rate between Oklahoma City and Dallas. Also, the price difference between Lubbock-Amarillo and Dallas result in alignment rates of about 2.1 cents and 1.9 cents between Lubbock and Dallas and Amarillo and Dallas, respectively. The application of a minus 19-cent location adjustment for Zone 1A would result in an alignment rate of about 1.4 cents between Wichita Falls and Dallas while the current minus 25-cent adjustment would result in about a 1.8-cent alignment rate.

In view of the previous considerations, the minus 25-cent location adjustment for Zone 1A should be continued and the proposed 19-cent adjustment should be denied. Since price alignment considerations are the only factors identified on the record of this proceeding, the current location adjustment for Zone 1A should be continued since it establishes a better price relationship with the identified cities than the proposed adjustment. There is insufficient information in the record to substantiate the adoption of the proposed pricing change.

The 12-cent reduction of the differential does not require any changes to the location adjustments of the pricing zones in the eastern portion of the Texas marketing area that are adjacent to the Greater Louisiana marketing area. The 12-cent reduction in Zones 2 (Tyler), 4 (Lufkin), and 8 (Beaumont) of the Texas marketing area will not result in Class I prices that are out of line with the Class I prices established under the Greater Louisiana order at the relevant points of Shreveport and Lake Charles.

Currently, the Class I price at Tyler is the same as the Class I price at Shreveport, which is 95 miles east of Tyler. Prior to the 1986 increase to the Texas and Greater Louisiana orders, the price at Tyler was nine cents less than the price at Shreveport. Basically, lowering the Class I price at Tyler will reestablish the west to east pricing that previously existed and is not excessive over the mileage involved.

The price at Lufkin, which is south of Tyler and Shreveport, is currently 18 cents greater than the price at Shreveport and 32 cents less than the price at Lake Charles, which is further to the south. With the price reduction, the Lufkin price will be six cents greater than the Shreveport price and 44 cents less than the price at Lake Charles. The latter price difference is not excessive over the 140 mile between Lufkin and Lake Charles.

Currently, the price at Beaumont is four cents greater than the Lake Charles price and will be eight cents less than such price because of the reduced Class I differential. Such prices difference is also not excessive over the 58 miles between the cities.

In addition to purely Class I price alignment consideration, there is no information in the record of this proceeding to indicate that prices need to be modified, or increased, in these eastern Texas locations as a result of decreasing the Texas order Class I differential. Current prices in these eastern zones are based on the additional bulk milk hauling costs that are incurred in shipping milk to such zones from the northern production areas of the Texas market. Since the prices in these zones will continue to have the same relationship with the Class I price at Dallas, there is no indication that the price increases are necessary to compensate northern area producers for the additional service they provide to handlers in these zones relative to shipping milk to Dallas area plants.

Farm Fresh, a handler who operates a distributing plant regulated under the Southwest Plains order, filed an exception to reducing the Texas order Class I differential. Farm Fresh contends that the price reduction will hinder its ability to distribute fluid milk products in the Texas marketing area. In addition, Farm Fresh contends that the decision does not address the testimony of a number of parties who maintained that any significant reduction of the Texas order Class I differential would disrupt the alignment of pricing between the Texas order and other orders to the north and east.

A number of parties testified that there were limits to the amount by which the Texas order Class I differential could be reduced because of price relationships with markets to the east and north. These views were fully considered and the price reduction included herein, which is necessary to resolve the price alignment problem between eastern New Mexico and Texas, is within the range of the perceived pricing constraints expressed by a number of parties. The minimal price reduction included herein, which is necessary to reflect the additional cost of hauling bulk milk from common production areas to alternative plant outlets, obviously changes the price relationship among orders but should not affect the ability of plants in other areas to attract adequate supplies of milk. The identified price alignment problem between eastern New Mexico and Texas must be resolved and cannot be delayed on the basis of claims by handlers that such a change affects their ability to compete with other handlers for sales of fluid milk products. Also, a price alignment concern, in the context in which the issue of price alignment is addressed in this decision, can be addressed in additional proceedings in the event that such consideration is necessary. However, any such concern should not delay the completion of this proceeding.

As a result of the marketing area merger to form the New Mexico-West Texas order, conforming changes are necessary to the location adjustment provisions of the Texas and Southwest Plains orders. Both orders reference, by name and CFR Part number, the three separate orders included in the merger. Thus, the provisions are modified to recognize the merged order.

As additional modification to the Texas order located adjustment provisions is included to delete the reference to a number of counties in southwest Missouri. Such counties were included in the Southwest Plains marketing area after the Texas order was last amended to recognize the pricing of milk in such counties. Since the Texas order references the Southwest Plains marketing area, the listing of such counties in the Texas order is no longer necessary.

The Texas order is also modified by changing the minus 20-cent location adjustment for Bowie and Cass counties in Texas to minus 8 cents. Such modification reflects the 12-cent reduction to the Class I differential and continues to establish the same price in such counties that is recognized by the Central Arkansas and Southwest Plains orders. Such modification is consistent with the 12-cent location adjustment change that occurs in all those areas where the Texas order location adjustment is the difference between the Texas order Class I price and the Class I price established by another order. In addition, to reflect the 12-cent price drop, the Texas order location adjustment for Louisiana locations is modified to establish the plus location adjustments that are necessary to reflect the higher value of milk in Louisiana. Currently, no location adjustments are applied to Louisiana because the Class I price of milk at Shreveport and Dallas is the same.

Three additional nonsubstantive changes are included for the Southwest Plains order. Typographical errors in three different sections of the order are corrected.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

A brief filed by Gold Star argues that little weight should be given to certain testimony presented by two witnesses representing MorningStar Foods, Inc., Hygeia Dairy Co., and Borden, Inc. Additionally, Gold Star argues that it would be more appropriate to reverse rulings of the Administrative Law Judge and, thus, strike the testimony of the witnesses. In the event that such motions are not granted, Gold Star requests that the hearing be reopened or the record be supplemented with additional information obtained by Gold Star after the closing of the hearing.

All the testimony and information associated with Gold Star's requests relate to changes in sales outlets among regulated handlers, and the possible reasons for such shifts in outlets. In this regard, the decision concludes that changes in sales occur for any number of reasons. However, the extent to which sales shifts may or have occurred is of little importance to the extent that a misalignment of raw milk pricing is identified. The magnitude of the misalignment of pricing, in terms of the additional costs involved in hauling bulk milk from procurement areas to alternative outlets, is identified and rectified. The magnitude of the price alignment problem is a sufficient basis in itself to justify the pricing changes included herein. Basically, little weight need be given to the testimony concerning sales shifts among plants, and additional information concerning possible reasons, other than price, that may have caused changes in sales is not necessary. Consequently, the motion to reopen or supplement the record is denied. Also, no useful purpose would be served in reversing the rulings of the Administrative Law Judge. Such rulings were appropriate since testimony of regulated handlers concerning sales changes that may be a result of inequitable pricing is relevant to the issues considered at the hearing. However, the extent to which factors other than raw milk prices may be associated with sales shifts is not a matter that needs to be dealt with in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the New Mexico-West Texas order (which merges and amends the Rio Grande Valley, Texas Panhandle, and Lubbock-Plainview, Texas, orders), and the Texas and Southwestern Plains orders as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in each of the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements, the merged New Mexico-West Texas order, and in the Texas and Southwest Plains orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements, the merged New Mexico-West Texas order, and the Texas and Southwest Plains orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements, the merged New Mexico-West Texas order, and in the Texas and Southwest Plains orders, as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that for the merged New Mexico-West Texas order the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1138.85 of the aforesaid tentative marketing agreement and the New Mexico-West Texas order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Gold Star filed exceptions that claim that a number of proposed findings and conclusions presented in its brief were not addressed by the recommended decision. Specifically, Gold Star argues that there were no findings concerning costs of production, rates of milk production growth and certain marketing patterns.

In this regard, the recommended decision and this final decision sets forth an analysis based on the relevant facts that identify the magnitude of the price alignment problem as well as a resolution to the problem. These relevant factors (production areas, plant locations, distances and hauling costs) are identified in the decision and include most of the proposed findings contained in Gold Star's brief. The decision identifies the increase in production that has occurred, the existence of surplus milk, the primary production areas in New Mexico, and the various locations to which such milk is shipped for fluid and surplus uses. The decision does not consider those proposed findings involving speculation as to potential future production increases, where such increases might occur, whether milk should be moved in a different manner or the possible motives behind AMPI's proposal to increase the price at Clovis. The decision deals with marketing conditions relevant to the price alignment issue.

Gold Star claims that additional proposed findings were not addressed that were intended to respond to the false claims of Texas handlers that Gold Star enjoys a distribution advantage in Texas as a result of the Class I price at Clovis. Such proposed findings concern the Gold Star plant operation and its distribution method and sales area, and claims concerning the relative efficiencies of the Gold Star plant versus other plants. Although many of these proposed findings are included as either background information or for identifying overall marketing conditions in the merger, pricing and other issues, they basically deal with distribution methods and sales competition among handlers. The decision concludes that such factors are not relevant with respect to consideration of the price alignment problem identified in this proceeding.

Gold Star's exceptions also claim that the location adjustment changes adopted herein are inappropriate because the analysis and findings

required under 7 U.S.C. 608c(18) for the purpose of establishing prices were not performed on the basis of the record of this proceeding. In this regard the decision concludes that milk production has increased in both Texas and New Mexico even though the Food Security Act of 1985 provided for no Class I price increase under the Rio Grande Valley order and a 96-cent increase under the Texas order. As a result, the decision concludes that there is no information in the record to determine the extent to which price levels should be reduced to establish a disincentive for milk production. The record does, however, identify a significant price misalignment problem between eastern New Mexico and Texas that can only be rectified through a combination of a location adjustment change in eastern New Mexico and a price reduction for the Texas market. Such price alignment or location adjustment problems in Federal orders customarily are rectified, and were so formulated under this proceeding, under the authority of Section 608c(5) of the Agricultural Marketing Agreement Act of 1937, which clearly authorizes adjustments to prices paid to producers and charged to handlers on the basis of the locations at which the delivery of milk is made to handlers, and not under Section 608c(18).

In this regard Gold Star also filed a motion to reopen the record of the proceeding to receive additional information, either by officially noticing such information or by reconvening the hearing. Gold Star indicates that such information pertains to New Mexico milk production costs, milk production growth in eastern New Mexico, and fuel costs.

Both Borden and SFG opposed Gold Star's motion on the basis that granting the motion would delay the completion of the rulemaking process that has identified a price alignment problem. Basically, both handlers argue that granting the motion would essentially establish a precedent that would preclude the completion of any rulemaking proceeding as a result of purported changes in information after the record has been closed. SFG also opposes the motion on the basis that it incorrectly attributes the decision for concluding that transportation costs are not significantly different from those in 1975 when in fact the comparison is with transportation costs in 1986 when the pricing structure of the Texas market was last reviewed. SFG also contends that the information requested by Gold Star is speculative and irrelevant and was presented in a subsequent national rulemaking hearing.

Gold Star's motion must be denied since it would introduce a procedural element that would totally frustrate the ability of the Department to respond to identified marketing problems. This decision concludes that there is ample evidence in the record that identifies the magnitude of a price alignment problem that has existed since the opening of the Clovis plant and which continues to result in serious inequities among producers and handlers. A resolution of this problem requires a completion of the proceeding.

It is obvious that marketing conditions are subject to change and can be considered at future amendatory proceedings. This does not mean, however, that this rulemaking proceeding should be delayed, or brought to a halt, as a result of a claim that conditions have changed. Any significant changes in marketing conditions could be accommodated through the initiation of a new proceeding.

In this regard, it is noted that most of the information that Gold Star wishes to include in this record was presented at a subsequent hearing that was held to consider a number of pricing and other changes to all Federal milk orders. Such information was presented as direct testimony, entered as exhibits or was officially noticed and was subject to cross-examination by hearing participants. Such information will be considered in the context of that proceeding.

Gold Star also reiterated an argument presented in its brief that the testimony of certain Texas handlers should be stricken from the record, thus reversing a ruling of the Administrative Law Judge. Gold Star argues that the testimony should be stricken because it was unreliable.

Exclusion of the testimony on the basis of Gold Star's claim that it was unreliable is argumentative at best and serves only to frustrate the need to address the identified marketing problem. Furthermore, excluding such testimony (which is determined to be relevant to the issue) would amount to changing the posture of the record by removing the concerns expressed and considered to be important by Texas handlers. In addition, such testimony, in conjunction with other information in the record supports the conclusion that sales outlets shift among handlers for any number of reasons, which is the conclusion offered by Gold Star. For these reasons, as well as for reasons previously set forth in response to Gold Star's brief, the motion to strike the testimony and reverse the rulings of the Administrative Law Judge is denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

February 1991 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the New Mexico-West Texas order (which amends and merges the orders, as amended, regulating the handling of milk in the Rio Grande Valley, Texas Panhandle, and Lubbock-Plainview, Texas marketing areas) and the Texas and Southwest Plains orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas and Southwest Plains marketing areas is approved or favored by producers, as defined under the terms of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1106, 1120, 1126, 1132, and 1138

Milk marketing orders.

Signed at Washington, DC, on: August 14, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending and Merging the Orders Regulating the Handling of Milk in the Rio Grande Valley, Texas Panhandle and Lubbock-Plainview, Texas Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when each of the

aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The New Mexico-West Texas order which amends and merges the aforesaid orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the New Mexico-West Texas marketing area, and the minimum prices specified in the New Mexico-West Texas order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The New Mexico-West Texas order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the New Mexico-West Texas order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1138.85 of the attached New Mexico-West Texas order.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Rio Grande Valley, Texas Panhandle, and Lubbock-Plainview, Texas marketing areas (Parts 1138, 1132, and 1120, respectively) shall be amended and merged into one order. Parts 1132 and 1120 are thereby removed and such vacated part designations shall be reserved for future assignment. The handling of milk in the merged marketing area, to be designated as the "New Mexico-West Texas Marketing Area" (Part 1138) shall be in conformity to and in compliance with the terms and conditions of the following attached order.

The provisions of the proposed marketing agreement and order amending the aforesaid orders, as contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on October 22, 1990, and published in the Federal Register on October 29, 1990 (55 FR 43345), shall be and are the terms and provisions of this order, and are set forth in full herein, subject to modifications in §§ 1138.51 and 1138.74.

Title 7 of the Code of Federal Regulations, Chapter X, is amended as follows:

1. Part 1138 is revised to read as follows:

PART 1138—MILK IN NEW MEXICO-WEST TEXAS MARKETING AREA

Subpart—Order Regulating Handling

Authority. Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

SUBPART—ORDER REGULATING HANDLING

General Provisions

§ 1138.1 General provisions.

The terms, definitions and provisions in part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1138.2 New Mexico-West Texas Marketing area.

The *New Mexico-West Texas marketing area*, hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (Municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone 1: Following counties—Bernalillo, Catron, Cibola, Colfax, Curry, De Baca, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union and Valencia, all in the State of New Mexico, and El Paso in Texas.

Zone 2: Following counties—Archuleta, LaPlata and Montezuma in Colorado, and Chaves, Eddy, Lea and San Juan in New Mexico.

Zone 3: Following counties—Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam Deaf Smith, Dickens, Donley, Floyd, Gaines, Garza, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Terry, Wheeler and Yoakum, all in the state of Texas.

§ 1138.3 Route disposition.

Route disposition means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of any fluid milk product classified as Class I milk.

§ 1138.4 Plant.

Plant means the land, buildings, facilities and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed or packaged. Separate facilities use only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1138.5 Distributing plant.

Distributing plant means any plant:

(a) Approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption.

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition in the marketing area during the month.

§ 1138.6 Supply plant.

Supply plant means a plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption from which fluid milk products are transferred to a distributing plant(s) during the month.

§ 1138.7 Pool plant.

Pool plant means:

(a) A distributing plant:

(1) From which during the month there is total route disposition (except filled milk) in an amount not less that 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from the plant, and not less than 10 percent of such receipts are disposed of as fluid milk products on routes in the marketing area; or

(2) Located in the marketing area that qualifies pursuant to paragraph (a)(1) of this section so long as this order's Class I price applicable at such plant location is not less than an other order's Class I price applicable at the same location even though the plant may meet the pooling requirements of the other Federal order and have greater route disposition in the other marketing area than in the New Mexico-West Texas marketing area.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk that is received from dairy farmers (including producer milk diverted from the plant pursuant to § 1138.13, but excluding milk diverted to such plant) and handlers described in § 1138.9(c) is transferred to plants described in paragraph(a) of this section, subject to the following:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through January shall continue to qualify in each of the following months of February through August.

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and 35 percent or more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received during the month in the form of bulk fluid milk products at plants specified in paragraph (a) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1138.30.

(e) The term *pool plant* shall not apply to the following plants:

(1) A producer-handler plant, a governmental agency plant, or an exempt plant;

(2) A distributing plant qualified pursuant to paragraph (a)(1) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part; or

(5) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under another Federal order.

§ 1138.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this Part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a distributing plant that does not qualify as a pool plant and is not an other order plant, a governmental agency plant, or a producer-handler plant.

(d) *Unregulated supply plant* means a nonpool plant, except another order plant, a governmental agency plant, or a producer handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1138.7.

(e) *Governmental agency plant* means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from the pricing and pooling provisions of this order.

(f) *Exempt plant* means any plant that has monthly route disposition of 150,000 pounds or less that may be exempt from the pricing and pooling provisions of this order if the handler operating the plant files timely reports as specified by the market administrator and maintains adequate books and records that are made available to the market administrator which will enable determination of the exempt status of such plant.

§ 1138.9 Handler.

Handler means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1138.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) Any person who is a producer-handler or who operates a governmental agency or exempt plant; and

(f) Any person who operates an other order plant described in § 1138.7(e) or an unregulated supply plant.

§ 1138.10 Producer-handler

Producer-handler means any person:

(a) Who processes and packages milk from his or her own farm's production;

(b) Who has route disposition within the marketing area consisting of any portion of such milk;

(c) Who receives no fluid milk products from other dairy farmers or from any source other than a pool plant and whose receipts from pool plants are not in excess of 11,000 pounds per month;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool plants; and

(e) Who furnishes to the Market Administrator for verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

§ 1138.11 [Reserved]

§ 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted regulatory agency and whose milk is:

(1) Received at a pool plant or by a handler described in § 1138.9(c); or

(2) Diverted pursuant to § 1138.13 by a handler for such handler's account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) A governmental agency that operates a plant exempt pursuant to § 1138.8(e) and a handler that operates an exempt plant pursuant to § 1138.8(f);

(3) Any person with respect to milk production that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1138.44(a)(8)(iii) and the corresponding step of § 1138.44(b); or

(4) Any person with respect to milk production that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1138.13 Producer milk.

Producer milk means the skim milk and butterfat in milk from a producer that is:

(a) Received by the operator of a pool plant directly from such producer. Any milk picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month, shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1138.9(c), is the handler for such milk.

(b) Received by a handler described in § 1138.9(c).

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant, without limit in any month. Such milk shall be priced at the location of the plant to which diverted.

(d) Diverted by the operator of a pool plant or by a cooperative association from a pool plant to a nonpool plant (other than a producer-handler plant), subject to the following conditions:

(1) In each of the months of September through January, milk of a producer shall not be eligible for diversion from a pool plant under this section unless at least one day's production from such producer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a cooperative association in any month shall not exceed the total quantity of producer milk that the cooperative association caused to be delivered to and was physically received at pool plants during the month;

(3) The operator of a pool plant other than a cooperative association may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted in any month shall not exceed the total quantity of milk that was physically received at pool plant(s) as producer milk for which the plant operator is the handler;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last-day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limits are accounted for;

(5) The quantity of milk diverted from a pool plant that would cause the pool plant to become a nonpool plant shall not be producer milk. Diversions in excess of the prescribed limit shall be prorated among the diverting handlers;

(6) If a dairy farmer loses producer status under this order (except as a result of temporary loss of approval from a duly constituted regulatory agency for the production of milk for fluid consumption), such dairy farmer's milk shall not be eligible for diversion until it has been physically received as producer milk at a pool plant; and

(7) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1138.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1138.40(b)(1) from any source other than producers, handlers described in § 1138.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1138.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1138.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1138.40(b)(1) for which the handler fails to establish a disposition.

§ 1138.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey, and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1138.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream of frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1138.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1138.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or milk products for its members.

§ 1138.19 [Reserved]

§ 1138.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1138.51(a):

(a) Butter price. *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) Cheddar cheese price. *Cheddar cheese price* means the simple average for the first 15 days of the month of the daily price per pound of cheddar cheese in 40-pound blocks. The price used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average price shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the

next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) Nonfat dry milk price. *Nonfat dry milk price* means the simple average, for the first 15 days of the month, of the daily price per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) Edible whey price. *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1138.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of such handler's pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1138.9(c);

(3) Receipts of fluid milk products and bulk fluids cream products from other pool plants;

(4) Receipts of other source milk.

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1138.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1138.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report for each of the handler's plants with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1138.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1138.9 (a), (b) and (c) who pays producers pursuant to § 1138.73 shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month;

(1) The name and address of each producer;

(2) The amount paid each producer; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1138.76(b) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month;

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized in writing by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hundredweight and the net amount paid each dairy farmer.

§ 1138.32 Other reports.

(a) On or before the 21st day of each month, each handler described in § 1138.9(a) who is required pursuant to § 1138.71(c) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1138.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 7th day after the end of each month, each handler described in § 1138.9(a), (b) and (c) shall report to the market administrator the following information with respect to its receipts of milk during such month.

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from each producer, its average butterfat content and the total pounds of milk diverted to each plant that is not a pool plant;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim and butterfat received from a handler described in § 1138.9(c) and

(5) The pounds of skim milk and butterfat in bulk fluid milk products

received from a pool plant operated by a cooperative association.

(c) On or before the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator and to the market administrator the name and location of the transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a) through (c) of this section and § 1138.30 and § 1138.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(e) Each handler other than a cooperative association who causes milk to be diverted shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

Classification of Milk

§ 1138.40 Classes of utilization.

Except as provided in § 1138.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1138.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custard, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition.

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1138.15; and

(6) In shrinkage assigned pursuant to § 1138.41(a) to the receipts specified in § 1138.41(a)(2) and in shrinkage specified in § 1138.41(b) and (c).

§ 1138.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1138.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skin milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1138.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively in bulk fluid milk products received from unregulated supply plants, excluding the quantity for

which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not is excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1138.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1138.44(a)(7) or the corresponding step of § 1138.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1138.44(a) (11) or (12) or the corresponding step of § 1138.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2) or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II of Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the class to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available.

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1138.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt plants and governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt plant or and a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipt of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, an exempt handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferror-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1138.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator.

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such noonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers by a handler described in § 1138.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1138.9(c) to another handler's pool plant shall be classified pursuant to § 1138.44 pro rata with producer milk received at the transferee-handler's plant and the value thereof at the class prices shall be included in the pool plant handler's value of milk pursuant to § 1138.60.

§ 1138.43 General classification rules.

In determining the classification of producer milk pursuant to § 1138.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1138.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1138.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1138.40, 1138.41, and 1138.42. The combined pounds of skim milk and butterfat so determined in each Class for a handler described in § 1138.9 (b) or (c) shall be such handler's classification of producer milk.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1138.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1138.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1138.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1138.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts.

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1138.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds oı skim milk in each of the following:

(i) Otner source milk (except that received in the form of a fluid milk

product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1138.40(b)(1) that was not subtracted pursuant to paragraph (a) (4), (5) and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant and an exempt plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1138.12(b)(5);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (a)(7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1138.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1138.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity pro-rated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (a)(7)(v), and (a)(8) (i) and (ii) of this section and that were not offset by transfers or diversion of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and Class II to the extent of available utilization in such classes at the nearest other pool of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk;

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1138.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such product pursuant to § 1138.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1138.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1138.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1138.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1138.44(a)(12) and the corresponding step § 1138.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1138.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to another order plant the class to which shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the amount and class utilization of milk received by each handler from producers whose milk is being marketed by such cooperative association. For the purpose of this report, the milk caused to be so delivered by a cooperative association shall be pro-rated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1138.50 Class Prices.

Subject to the provisions of § 1138.53, the class prices for the month per hundredweight milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.35.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1138.52 for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic formula price for the second preceding month, adjusted pursuant to paragraph (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (round to the nearest cent) of the basic formula prices computed pursuant to § 1138.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1138.52.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1138.51 Basic formula price.

The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat

differential pursuant to § 1138.74 shall be used.

§ 1138.52 Basic Class II formula price.

The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1138.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1138.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese:

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1138.53 Plant location adjustments for handlers.

For milk received at a plant from producers or a handler described in § 1138.9(c) and which is classified as Class I milk, the price specified in § 1138.50(a) shall be adjusted by the amount stated in paragraph (a) of this section for the location of such plant:

(a) For a plant located within one of the zones set forth in § 1138.2, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 2	Minus 15 cents.
Zone 3	Plus 14 cents.

(b) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section.

§ 1138.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1138.50(b).

§ 1138.55 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1138.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1138.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1138.9(c) that were classified in each class pursuant to §§ 1138.43(a) and 1138.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1138.44(a)(14) and the corresponding step of § 1138.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1138.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1138.44(a)(9) and the corresponding step of § 1138.44(b);

(d) And the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (i) through (iv) and (vii) and the corresponding step of § 1138.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (v) and (vi) and the corresponding step of § 1138.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by

the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(11) and the corresponding step of § 1138.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Subtract for a handler described in § 1138.9(c) the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to another handler's pool plant during the month.

§ 1138.61 Computation of uniform price.

The market administrator shall compute for each month the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1138.60 for all handlers who filed the reports prescribed in § 1138.30 for the month and who made the payments pursuant to § 1138.71 for the preceding month;

(b) Add not less than one-half of the obligated balance in the producer-settlement fund;

(c) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments computed pursuant to § 1138.75;

(d) Divide the resulting amount by the sum of the following for all handlers included in the computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1138.60(f); and

(e) Subtract not more than 5 cents. The result shall be the "uniform price" for milk received from producers.

§ 1138.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the applicable uniform price pursuant to § 1138.61 for such month.

Payments for Milk

§ 1138.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the *producer-settlement fund* into which he shall deposit all payments made by handlers pursuant to §§ 1138.71, 1138.76 and 1138.77 and from which he shall make all payments pursuant to §§ 1138.72 and §§ 1138.77, except that payments to a cooperative association pursuant to § 1138.72 shall be offset by any payments due from such cooperative association pursuant to § 1138.71 that have not been received by the market administrator.

§ 1138.71 Payments to the producer-settlement fund.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of the month the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1138.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1138.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1138.9(c). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to § 1138.73(d), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1138.60(f).

(b) Subject to paragraph (d) of this section, each person who operated a plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator on or before the 25th day after the end of each month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide poll orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

(c) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under Part 1138 shall pay to the market administrator the amount the handler would have otherwise been required to pay the producers and cooperative associations pursuant to § 1138.73. Payment shall be made to the market administrator on or before the day prior to the dates specified in § 1138.73 and such payments shall continue until the administrator has met all payment obligations for 3 consecutive months.

(d) The following conditions shall apply with respect to payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator.

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payment shall not be due until the next day on which the market administrator's office is open for public business.

(3) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1138.73 (b) and (d).

§ 1138.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after the end of each month the market administrator shall pay to each handler except one making payment pursuant to § 1138.71(c) the amount, if any, by which the amount computed pursuant to § 1138.71(a)(2) exceeds the amount computed pursuant to § 1138.71(a)(1).

(b) If the market administrator received payment from a handler(s) pursuant to § 1138.71(c), he shall distribute such amount plus any amount due such handler(s) pursuant to paragraph (a) of this section to producers and to cooperative associations in the same manner as provided in § 1138.73. In the event the handler fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(c) If at any time the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1138.73 Payments to producers and to cooperative associations.

(a) Except as provided in § 1138.71(c) and paragraphs (b), (d) and (f) of this section, each handler shall make payment to each producer from who milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 23rd day of the month, an amount equal to not less than the previous month's uniform price (adjusted for location of such plant) multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer, provided that the deductions do not exceed the value of the milk received during the partial payment period and the handler has paid such deductions to assignees by the payment is otherwise due the producer.

(2) On or before the 17th day of the following month, an amount equal to not less than the appropriate uniform price adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1138.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer, provided that the deductions do not exceed the value of the milk received during the final payment period and the handler has paid such deductions to assignees by the date payment is otherwise due to the producer: *Provided*, That if by such date such handler had not received full payment from the market administrator pursuant to § 1138.72(a) for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producer shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (f) of this section, in the case of a cooperative association which the market administrator determines is authorized by those producers for whom it markets milk to collect payment for their milk and which has so requested any handler in writing, such handler other than one specified in § 1138.71(c) shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from those producers for whom it markets milk as determined by the market administrator an amount equal to not less than the amount due such producers as determined pursuant to paragraph (a) of this section.

(c) In making payments to producers pursuant to paragraph (a) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each handler shall furnish such producer or cooperative association with respect to each of the producers for whom it markets milk and from whom the handler received milk during the month, a written statement showing:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds, and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(d) Except as provided in § 1138.71(c) and paragraph (f) of this section, each handler pursuant to § 1138.9(a) who receives milk from a cooperative association as a handler pursuant to § 1138.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 2nd day prior to the last day of the month for milk received during the first 15 days of the month, not less than the applicable partial payment rate specified for such month in paragraph (a)(1) of this section; and

(2) On or before the 15th day of the following month for milk received during the month, not less than the uniform price as adjusted pursuant to § 1138.74 and § 1138.75, less any payments made pursuant to paragraph (a)(1) of this section.

(e) Except as provided in § 1138.71(c), each handler who received bulk fluid milk or bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the cooperative association:

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate specified for such month in paragraph (a)(1) of this section. If the handler so elects, such price may be adjusted by the butterfat differential specified in § 1138.74 for the preceding month.

(2) On or before the 15th day after the end month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1138.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1138.74, less any payments made by the handler pursuant to paragraph (e)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant including the applicable administrative assessment rate.

(f) If the application of § 1138.71(d)(2) results in a delay in payment by the market administrator to handlers, the payments prescribed in paragraphs (a), (b) and (d) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to § 1138.71(c), he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which remaining payment is received from such handler.

§ 1138.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the

nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments required pursuant to § 1138.73, the uniform price computed pursuant to § 1138.61 shall be adjusted by the amounts set forth in § 1138.53 according to the location of the plant where the milk being priced was received.

(b) For the purpose of computations pursuant to §§ 1138.71 and 1138.72, the uniform price shall be adjusted by the amount set forth in § 1138.53 that is applicable at the location of the non-pool plant from which the milk was received.

§ 1138.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to § 1138.30(b) and § 1138.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distribution plant;

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers full regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant; and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1138.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1138.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1138.60 for such handler shall include, in lieu of the value of other source milk specified in § 1138.60(f) less the value of such other source milk specified in § 1138.71(a)(2)(ii), a value of milk determined pursuant to § 1138.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1138.7(b) subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to § 1138.30(b) and 1138.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § 1138.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated.

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1138.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which results in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which the error occurred. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler, except that the market administrator shall offset any monies due a handler against monies due from such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required pursuant to § 1138.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1138.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1138.71, 1138.73, 1138.76, 1138.77, 1138.85, or 1138.86 shall be increased 1 percent beginning on the first day after the due date, and on the same day of each subsequent month until such obligation is paid, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1138.85 Assessment for order administration.

As each handler's pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1138.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1138.9(c);

(c) Other source milk allocated to Class I pursuant to § 1138.44(a) (7) and (11) and the corresponding steps of § 1138.44(b), except such other source milk that is excluded from the computation pursuant to § 1138.60 (d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1138.76(a)(2).

§ 1138.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1138.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determined by the Secretary. Each handler making such deductions shall pay the deductions to the market administrator on or before the 15th day after the end of the month. The monies shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to the market administrator.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producer as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deduction to the cooperative association rendering such services accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

PARTS 1120 AND 1132—[REMOVED]

2. Parts 1120 and 1132 are removed and reserved for future assignment.

Order Amending the Orders Regulating the Handling of Milk in the Texas and Southwest Plains Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the purposed marketing agreements and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on October 22, 1990, and published in the **Federal Register** on October 29, 1990 (55 FR 43345), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, subject to a modification in § 1126.52(a)(1).

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1106.9 [Amended]

2. In § 1106.9(f), the reference to "§ 1106.7(e)" is changed to "§ 1106.7(f)."

§ 1106.43 [Amended]

3. In the introductory text of § 1106.43, the reference to "§ 1160.44" is changed to "§ 1106.44."

§ 1106.44 [Amended]

4. In § 1106.44(a)(1), the reference to "§ 1106.4(b)" is changed to "§ 1106.41(b)."

5. Section 1106.52 is amended by changing the reference to "paragraphs (a) (1) through (9)" in the introductory text of paragraph (a) to "paragraphs (a) (1) through (7)", and by removing paragraphs (a) (8) and (9) and revising paragraphs (a) (6) and (7) that read as follows:

§ 1106.52 Plant location adjustments for handlers.

(a) * * *

(6) For a plant located in any of the following territory in the States of Texas, New Mexico and Colorado, the adjustments shall be as follows:

(i) In the Texas marketing area, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas order (Part 1126) and the Class I price specified in § 1106.50(a).

(ii) In Bowie or Cass Counties, Texas, the adjustment shall be plus 31 cents.

(iii) In any other Texas territory that is outside the marketing area of any Federal order, the adjustment shall be plus 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the City Hall in Oklahoma City, Oklahoma, (based on the shortest hard-surfaced highway distance as determined by the Market Administrator.)

(iv) In the New Mexico-West Texas marketing area, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the New Mexico-West Texas order (Part 1138) and the Class I price specified in § 1106.50(a).

(v) In the Eastern Colorado marketing area or in the Colorado counties of Baca, Bent or Powers, the adjustment shall be the difference (plus or minus) between the applicable Class I price effective at such plant location under the Eastern Colorado order (Part 1137) and the Class I price specified in § 1106.50(a).

(vi) In any other Colorado territory that is outside the designated pricing areas described in paragraphs (a)(6)(iv) and (v) of this section, the adjustment shall be minus 77 cents.

(7) For a plant located outside the designated pricing areas described in paragraphs (a)(1) through (6) of this section, the adjustment shall be minus 18 cents plus an additional reduction of 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the City Hall in Tulsa or Ponca City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the Market Administrator.)

* * * * *

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1126.50, paragraph (a) is revised to read as follows:

§ 1126.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.16.

* * * * *

3. In § 1126.52, paragraph (a) is revised to read as follows:

§ 1126.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (8) of this section for the location of such plant;

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1A	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 15 cents.
Zone 4	Plus 18 cents.
Zone 5	Plus 20 cents.
Zone 6	Minus 21 cents.
Zone 7	Plus 30 cents.
Zone 8	Plus 54 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents.
Zone 12	Plus 75 cents.

(2) For a plant located in the New Mexico-West Texas marketing area, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the New Mexico-West Texas order (part 1138) and the Class I price specified in § 1126.50(a).

(3) For a plant located in Bowie or Cass County, Texas, the adjustment shall be minus 8 cents.

(4) For a plant located in the State of Texas that is outside the designated pricing areas described in paragraphs (a) (1) through (3) of this section, the adjustment shall be the adjustment applicable at the nearer of Corpus Christi, San Angelo, or San Antonio, Texas, except that for a plant located in the Texas counties of Brewster, Crane, Crockett, Culberson, Hudspeth, Irion, Jeff Davis, Loving, Pecos, Presidio, Reagan Reeves, Terrell, Upton Ward, and Winkler, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in San Angelo, Texas (based on the shortest hard-surfaced highway distance as determined by the Market Administrator.)

(5) For a plant located in the Southwest Plains marketing area or in Pulaski County, Missouri, the minus adjustment shall be the difference between the applicable Class I price effective under the Southwest Plains order (Part 1106) and the Class I price specified in § 1126.50(a).

(6) For a plant located in the State of Arkansas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Central Arkansas

order (Part 1108) and the Class I price specified in § 1126.50(a).

(7) For a plant located in the state of Louisiana, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Greater Louisiana order (part 1096) and the Class I price specified in § 1126.50(a).

(8) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (7) of this section, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located form the City Hall is Dallas, Texas, (based on the shortest hard-surfaced highway distance as determined by the Market Administrator.)

* * * * *

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy at the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the ( ) marketing area (7 CFR part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of hundredweight of milk covered by this marketing agreement.

(b) Authorization To correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the proposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature) ________________

(Seal)

By ________________

(Name) (Title) (Address)

Attest ________________

[1] First and last sections of the respective orders.

[2] Appropriate part number.

[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

Date ________________

[FR Doc. 91-19995 Filed 8-26-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1137

[DA-91-016]

Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice requests written comments on a proposal to continue the suspension of certain provisions of the Eastern Colorado Federal milk order. These provisions have been suspended for the same periods for the previous five years. This proposal would suspend for September 1991 through February 1992, the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period. The "touch-base" requirement that each member-producer's milk be received at least three times each month at a pool distributing plant to be eligible for diversion would be suspended from September 1991 through August 1992. The percentage limits on the amount of milk that a cooperative may divert to surplus milk outlets would also be suspended for September 1991 through August 1992. The request for the continued suspension of these provisions was made by Mid-America Dairymen, Inc. (Mid-Am). Mid-Am is a cooperative association which represents producers who have been historically associated with the Eastern Colorado Order. Mid-Am requested this suspension in order to prevent the uneconomic movement of milk under the order.

DATES: Comments are due no later than September 3, 1991.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with the Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered:

1. For the months of September 1991 through February 1992:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1991 through August 1992:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December, and 20 percent in other months of," and the word "distributing".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1991 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension was requested by Mid-America Dairyman, Inc. (Mid-Am). Mid-Am is a cooperative association that has pooled milk from producers located in western Kansas and western Nebraska on the Eastern

Colorado Order for several years. Mid-Am has requested the continued suspension of certain provisions in order to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

Mid-Am requests for the months of September 1991 through February 1992, that the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period be suspended. Mid-Am also requests the suspension of the touch-base and diversion limitation requirements during the months of September 1991 through August 1992. These latter requirements have been suspended since September, 1985.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am asserts that it has made a commitment to Western Dairymen Cooperative, Inc., that milk pooled by Mid-Am will be available to meet the fluid requirements of fluid distributing plants if the suspension action is issued. Without the suspension action, Mid-Am contends that it will be necessary to ship milk from western Nebraska and western Kansas to Denver area bottling plants. This will displace locally produced milk that would then have to be shipped from the Denver area to surplus handling plants.

Mid-Am contends that the conditions that existed when the provisions were suspended previously still continue. During 1990, producer milk was 1.9 percent below 1989 with Class I sales down .3 percent. However, during January through May 1991, producer receipts were 9.6 percent higher than the same period in 1990, and Class I sales were up 1.1 percent. Mid-Am maintains that ample supplies of locally produced milk will be available to meet fluid needs without requiring that each producer's milk be received at least three times each month at a pool distributing plant or by restricting the amount of milk that can be diverted to nonpool plants.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: August 22, 1991.

Daniel D. Haley,

Administrator.

[FR Doc. 91-20502 Filed 8-26-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF STATE

Bureau of Politico—Military Affairs

22 CFR Part 121

[Public Notice 1458]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would revise and clarify Category XIII(a), XIII(b), and XIII(h) by defining more precisely which types of defense articles are subject to control under the United States Munitions List (USML). It would also add a new section XIII(j) that covers low observable equipment and a new section XIII(k) that covers technical data and defense services related to the articles in category XIII. Technical data and defense services are currently covered in categories XVIII and XIX.

DATES: Comments must be submitted on or before September 26, 1991.

ADDRESSES: Written comments should be sent to: Daniel L. Cook, Office of Defense Trade Controls, SA-6, room 228, U.S. Department of State, Washington, DC 20522-0602, fax # 703–875–6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Daniel L. Cook, Office of Defense Trade Controls, Department of State, tel. 703–875–6644.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

"By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the Cocom dual-use list unless significant U.S. national security interests would be jeopardized." (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778). The proposed rule that follows amends § 121.1, Category XIII.

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes from the exporting community addressing any current overlap which we have not identified as well as comments regarding commodities which overlap and are proposed for retention on the USML.

In implementation of the President's directive, the Department reviewed, in whole or in part, COCOM ILs 1205, 1465, 1502, 1514, 1526, 1527, 1529, 1531, 1533, 1544, 1545, 1561, 1565, 1566, 1572, 1585, 1610, 1733, and 1763 and ECCN 4261. Review of the Category XIII overlap of IL 1561—materials designed for use as absorbers of electromagnetic waves, IL 1585—cameras, and ECCN 4261—particle accelerators resulted in a determination that these items, unless specifically designed or modified for military use or related to space, should be under the jurisdiction of the Department of Commerce. Items related to space are the subject of a separate review. Notification on jurisdiction of spacecraft and related items will be the subject of a separate federal register notice. Overlaps were also identified in three other ILs: 1527, 1565, and 1566—cryptographic and ancillary equipment, computing equipment designed or modified for certifiable multi-level security, and software designed or modified for certifiable multi-level security. The Department intends that these areas of overlap will be retained on the USML because the transfer of jurisdiction would jeopardize significant national security interests, as elaborated below. With the exception of the three items identified above and described below under XIII(b), the Department of State believes Category XIII of the USML does not control any commodity currently on the Commodity Control List, nor is it the intention of the

Department to control such commodities in the future unless significant national security interests would be jeopardized.

First, this amendment to XIII(a) clarifies the type of cameras and associated equipment that are subject to the controls of the USML. This amendment also deletes "space cameras" which are intended to be controlled under the new space equipment category. This new wording is intended to eliminate the overlap with IL 1585, in accordance with the President's directive.

Second, this amendment revises the wording of Category XIII(b). This new wording is intended to have the effect of specifying and clarifying both the cryptographic goods or technology that are subject to the controls of the USML, as well as cryptographic goods or technology not controlled on the USML. Such goods and technologies are under constant review within the U.S. Government to determine whether they might be moved to the Commerce Commodity Control List or should remain on the USML for reasons of national security. For example, the cryptographic goods and technology (including mass market software products) described in subparagraphs (i) through (vii) of the amended language to XIII(b)(1) may no longer be controlled by the USML. However, such products meeting the definition of paragraphs (1) through (5), except for the subparagraphs just referenced, are intended to remain under USML control. Consistent with past practice, control of the goods and technology in paragraphs (1) through (5) of Category XIII(b) may be transferred to the jurisdiction of the Department of Commerce on a case-by-case basis when appropriate in light of the national security interests implicated by such goods and technology. Most mass market software products containing incription are expected to fall under Commmerce jurisdiction.

Cryptographic goods which are clearly not included on the USML under XIII(b)(1) (i) through (vii) are intended to be controlled by other government agencies (e.g. Commerce). Therefore, a statement from the Department of State, Office of Defense Trade Control, verifying that the equipment in XIII(b)(1) (i) through (vii) is not subject to the licensing jurisdiction of the Department of State is no longer required.

In reference to XIII(b)(4) below, the Trusted Computer System Evaluation Criteria publication is available from the Government Printing Office.

Third, this amendment to XIII(d) clarifies what materials are subject to the controls of the USML. The rewording of XIII(d) acknowledges the development of Commercial markets for carbon/carbon and metal matrix composites and transfers them to CCL 1763, unless they are specifically designed to modified for an article on the USML. These new controls are intended to supersede those identified under Munitions Control Newsletters, 35 (April 77), 74 (Sept. 79), and 79 (Feb. 80). However, significant national security interests warrant controlling on the USML all carbon/carbon billets and preforms which are exclusively military, and are directly related to nuclear weapons and their strategic delivery systems.

Fourth, this amendment to XIII(h) clarifies what devices embodying particle beam and electromagnetic pulse technology are subject to the controls of the Department of State. This new wording is intended to eliminate the overlap with ECCN 4261.

Fifth, this addition of XIII(j) clarifies what low observable equipment is subject to the controls of the USML. The new entry is required because of the lack of specific reference to low observable equipment in the current ITAR, and to protect U.S. national security interests, in evolving technologies significantly associated with next generation weapons and their delivery systems (e.g. stealth fighters and bombers).

Sixth, this addition of XIII(k) makes Category XIII more complete, as one no longer needs to reference back to Technical Data (Category XVIII) or Defense Services (Category XIX).

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close 30 days after publication of this proposed rule. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 F.R. 4311; 22 U.S.C. 2658.

2. Section 121.1, Category XIII is amended by revising paragraphs (a), (b), (d), and (h) and by adding paragraphs (j) and (k) to read as follows:

(a) Cameras and specialized processing equipment therefor, phototinterpretation, stereoscopic plotting, and phutgrammetry equipment which are specifically designed or modified for military purposes, and components specifically designed or modified therefor; (Space related articles are in Category XV(a)(1)).

* * * * *

(b) Information Security Systems and equipment, cryptographic devices, software, and components specifically designed or modified therefor, including:

(1) Cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components or software with the capability of maintaining secrecy or confidentiality of information or information systems, except those:

(i) Decryption-only capability for encrypted proprietary software, fonts or other computer-related proprietary information for the purpose of maintaining vendor control over said information;

(ii) Specially designed and limited to the issuance of cash or traveler checks, acceptance of deposits, account balance reporting and similar financial functions;

(iii) Restricted to analog techniques for voice transmission making use of fixed frequency inversions and/or fixed band scrambling techniques not exceeding eight bands and in which the transportation occurs not more frequently than once every second;

(iv) Restricted to analog techniques for use in facsimile or television systems and equipment;

(v) Personalized smart cards restricted for uses not controlled under this item.

(vi) Restricted to calculating a Message Authentication Code (MAC) or similar result to assure no alternation of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for authentication.

(vii) Restricted to protecting passwords or personal identification numbers (PIN) or similar data to prevent unauthorized access to computing facilities, but does not allow for encryption of files or text, except as directly related to the password and PIN protection.

(2) Cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits,

components or software which have the capability of generating spreading or hopping codes for spread spectrum systems or equipment.

(3) Cryptanalytic systems, equipment, assemblies, modules, integrated circuits, components or software.

(4) Systems, equipment, assemblies, modules, integrated circuits, components or software providing certified or certifiable multi-level security or user isolation exceeding class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) and software to certify such systems, equipment or software.

(5) Ancillary equipment specifically designed or modified for paragraphs (b) (1), (2), (3) and (4) of this category; (Space related articles are in Category XV(a)(2)).

(d) Carbon/carbon billets and preforms which are reinforced with continuous unidirectional tows, tapes, or woven cloths in three or more dimensional planes (i.e. 3D, 4D etc.). This is exclusive of carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only, and carbon/carbon 3D, 4D etc. end items which have not been specifically designed or modified for defense articles (e.g. brakes for commercial aircraft or high speed trains). Armor (e.g. organic, ceramic, metallic), and reactive armor which has been specifically designed or modified for defense articles. Structural materials including carbon/carbon and metal matrix composites, plate, forgings, castings, welding consumables and rolled and extruded shapes which have been specifically designed or modified for defense articles.

* * * * *

(h) Devices embodying particle beam and electromagnetic pulse technology and associated components and subassemblies (e.g. ion beam current injectors, particle accelerators for neutral or charged particles, beam handling and projection equipment, beam steering, fire control, and pointing equipment, test and diagnostic instruments, and targets) which are specifically designed or modified for directed energy weapon applications.

* * * * *

* (j) Hardware and equipment, which has been specifically designed or modified for military applications, that is associated with the measurement or modification of system signatures for detection of defense articles. This includes but is not limited to signature measurement equipment; prediction techniques and codes; signature materials and treatments; and signature control design methodology.

(k) Technical data (as defined in § 120.21) and Defense services (as defined in § 120.8) related to the defense articles listed in this subchapter. (See § 125.4 for exemptions; see also § 123.21). Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Dated: August 13, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 91-20443 Filed 8-26-91; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[PS-120-90]

RIN 1545-AP48

Gasoline Excise Tax; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the excise tax on gasoline.

DATES: The public hearing will be held on Monday, November 25, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, November 8, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS-120-90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202)-566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 4081 The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, November 8, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-20172 Filed 8-26-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 48

[PS-120-90]

RIN 1545-AP48

Gasoline Excise Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of proposed rulemaking relating to the excise tax on gasoline. The proposed regulations reflect and implement certain changes made by the Tax Reform Act of 1986 and the Revenue Reconciliation Act of 1990. The proposed regulations affect producers, importers, and distributors of gasoline and provide guidance relating to taxable transactions, persons liable for tax, gasoline blend stocks and additives, and gasohol.

DATES: Written comments must be received by October 28, 1991. Requests to appear at a public hearing scheduled for Monday, November 25, 1991, at 10 a.m. and outlines of oral comments must be received by November 8, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 5228, Attn: CC:CORP:T:R (PS-120-90), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to CC:CORP:T:R (PS-120-90), Internal Revenue Service, room 5228, 1111

Constitution Ave., NW., Washington, DC 20224. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Frank Boland, (202) 566–4475 (not a toll-free call). Concerning the hearing, Carol Savage, Regulations Unit, at (202) 377–9236 or (202) 566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The requirements for collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information requirements should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The requirements for collection of information in this proposed regulation are in §§ 48.4081–2(c)(3), 48.4081–3(d)(2), 48.4081–3(e)(2), 48.4081–3(f)(2), 48.4081–4(b)(1), 48.4081–4(b)(2), 48.4081–4(c), 48.4081–5(b), 48.4081–6(c)(1), 48.4081–6(c)(2), and 48.4081–7(d). This information is required by the Internal Revenue Service to verify compliance with sections 4081 and 4082 of the Internal Revenue Code. This information will be used for notification of a person's registration status, and provide support of tax-free sales of gasoline blend stocks and additives, reduced-rate sales of gasoline for gasohol production and certain refund claims. The likely respondents are businesses and other for-profit organizations, including small businesses and organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 310 hours.

Estimated average annual burden per respondent: 0.1 hour.

Estimated number of respondents: 3,100

Estimated frequency of responses: On occasion.

Background and Explanation of Provisions

I. Gasoline Distribution System

Gasoline generally is distributed from refineries and points of entry through the "bulk transfer/terminal system," to wholesale distributors, and then to retailers. The bulk transfer/terminal system consists of refineries, pipelines, waterborne gasoline transporting vessels, and terminals. Gasoline may be bought and sold many times while it is in this system. Terminals are large facilities that store and distribute gasoline and other liquid products. Some terminal operators own the gasoline stored in their terminals Other terminal operators do not own the gasoline stored in their terminals but rather lease the storage space to others. Still other terminal operators both own gasoline and lease space to others. Terminals where space is leased to others are known as "for-hire" terminals and persons that store gasoline in such terminals are known in the industry as "throughputters."

Gasoline leaves the bulk transfer/terminal system at the terminal "rack." At the rack, gasoline is usually loaded into tank trailers that are operated by, or on behalf of, wholesale distributors. A wholesaler may buy gasoline at the rack from a throughputter or terminal operator, or the wholesaler may itself be a throughputter or terminal operator.

After gasoline is loaded into the trailers, its is usually transported to retail stations where the fuel is sold to consumers. A wholesaler often will operate the retail service station. In some cases, gasoline may be bought and sold one or more times by other wholesalers before it is finally sold at the retail pump.

II. Structure of the Gasoline Tax

A. Before 1988

The federal gasoline tax is imposed by section 4081 of the Internal Revenue Code. Before 1988, the tax was imposed on the sale of gasoline by the producer thereof. A producer that was registered by the Internal Revenue Service could sell gasoline tax free to other registered producers and (1) to State and local governments, (2) to nonprofit educational organizations, (3) for use in certain vessels and aircraft, and (4) for export. The term "producer" was defined in section 4082 to include wholesale distributors. Thus, in practice, tax was not imposed until a registered wholesale distributor sold the gasoline to a retailer or at the wholesale's own retail pumps.

However, Congress found that considerable evasion may have occurred under this taxing structure. See Compliance with Federal Gasoline Excise Tax Provisions: Hearing before the Subcommittee on Oversight of the House Committee on Ways and Means, 99th Cong., 2d Sess. (1986).

B. Changes Made by the Tax Reform Act of 1986

Congress sought to address the weakeness in the pre-1988 taxing system in amendments made to the Code by section 1703 of the Tax Reform Act of 1986, Public Law 99–514 (the "1986 Act").

Effective January 1, 1988, the 1986 Act amended section 4081 to impose the tax on the earlier of the removal or sale of gasoline by the refiner, importer, or terminal operator. The bulk transfer of gasoline to a terminal operator by a refiner or importer was not considered a removal or sale of gasoline by the refiner or importer. Under section 4082, the term "gasoline" was defined to include, to the extent prescribed in regulations, gasoline blend stocks and products commonly used as additives in gasoline. Under section 4101, taxpayers were required to register and could be required by regulations to post a bond. Tax-free sales to states, to nonprofit educational organizations, for use as supplies for vessels and aircraft, and for export were no longer permitted. Instead, a credit or refund of the tax with respect to certain uses of gasoline could be claimed under sections 6416, 6420, and 6421.

Proposed regulations implementing provisions of the 1986 Act were published in the **Federal Register** on November 18, 1987 (52 FR 44141). Additional guidance on the gasoline tax has been published by the Service in Notice 87–83, 1987–2 C.B. 393; Notice 88–16, 1988–1 C.B. 482; Notice 88–26, 1988–1 C.B. 495; Notice 88–109, 1988–2 C.B. 446; Notice 89–101, 1989–2 C.B. 435; and Rev. Rul. 88–70, 1988–2 C.B. 338. Also, temporary regulations on bonding requirements were published in the **Federal Register** on September 27, 1988 (53 FR 37552).

Under the 1987 proposed regulations and subsequent Notices, tax generally is imposed on the earlier of (1) a sale to an unregistered throughputter, or (2) a removal at the terminal rack. Thus, tax is not imposed on removal at the terminal rack if tax already has been imposed on a sale within the bulk transfer/terminal system.

However, reports of tax evasion continued. For example, when gasoline is removed at the terminal rack, paperwork relating to the transaction may indicate that tax already was paid on an earlier sale to an unregistered throughputter when in fact, it was not.

C. Changes Made by the Revenue Reconciliation Act of 1990

Congress sought to resolve these problems in amendments made to the Code by section 11212 of the Revenue Reconciliation Act of 1990, Public Law 101–239 (the "1990 Act").

Effective July 1, 1991, the 1990 Act amends section 4081 of the Code to provide that tax is imposed on (1) The removal of gasoline from any refinery, (2) the removal of gasoline from any terminal, (3) the entry of gasoline into the United States for consumption, use, or warehousing, and (4) the sale of gasoline to an unregistered person unless there was a prior taxable removal, entry, or sale of such gasoline. However, the tax does not apply to any entry or removal of gasoline transferred in bulk to a terminal if the persons involved (including the terminal operator) are registered.

Under the 1990 Act, tax is imposed on any removal of gasoline at the terminal rack regardless of whether tax has previously been imposed on that gasoline. However, section 4081(e) of the Code, added by the 1990 Act, provides for a refund (without interest) to any person that pays tax to the government on a removal are the terminal rack if that person establishes to the satisfaction of the Secretary that a prior tax was paid to the government (and not credited or refunded) with respect to such gasoline.

In addition, the conference report to the 1990 Act, H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess., 1052 (1990), makes clear that the IRS may prescribe rules and administrative procedures for determining liability for payment of tax

III. Structure of These Proposed Regulations

This part III given an overview of the proposed regulations. Part IV discusses the provision in more detail and points out areas in which these proposed regulations differ from the 1987 proposed regulations and the Notices.

Section 48.4081–1 defines the terms used throughout the regulations. Section 48.4081–2 sets forth the general rule that tax is imposed on the removal of gasoline from a terminal at the terminal rack. Section 48.4081–3 provides that certain other events are also subject to tax. Section 48.4081–4 provides rules for gasoline blend stocks and additives, generally treating them as gasoline. Section 48.4081–6 provides rules relating to the reduced rate of tax imposed on gasohol and gasoline for use in the production of gasohol. Section 48.4081–7 provides rules relating to a refund of tax if tax is imposed on the removal at the terminal rack of previously-taxed gasoline. Section 48.4081–8 provides a measurement rule.

IV. Explanation of Provisions

A. General Rule—Tax Imposed on Removal at the Terminal Rack.

1. *In general.* Under § 48.4081–2(b), tax is imposed on gasoline removed from a terminal at the terminal rack. In contrast to provisions under the 1986 Act, this tax under the 1990 Act applies regardless of whether gasoline previously has been subject to tax. However, under § 48.4081–7, a refund may be available to the person that pays tax on previously-taxed gasoline. Part IV.E., below, discusses these refund rules.

As under existing rules, there are no removals of gasoline at the rack that are exempt from tax. Thus, for example, gasoline that is removed for sale to a State or local government or nonprofit educational organization is not exempt from tax. For rules relating to credits and refunds for these and certain other exempt uses, see sections 6416, 6420, 6421, and 6427.

2. *Liability for tax.* The person liable for the tax imposed on gasoline removed at the rack is the position holder. Section 48.4081–1(m) defines the term "position holder" as meaning the person that holds the inventory position to gasoline as reflected on the records of the terminal operator (i.e., has a contract with the terminal operator for the use of storage facilities and terminaling services at a terminal). This term also includes a terminal operator that owns gasoline in its terminal.

A position holder may not necessarily own the gasoline when it is removed at the rack. For example, A, a terminal operator, contracts with B, a throughputter, for the use of space in A's terminal for the storage of 200,000 gallons of gasoline. B then transfers title to the gasoline to C while the gasoline remains stored in the terminal. C, in turn, transfers title to the gasoline to D. A does not enter into a contract with C or D for the storage space at A's terminal. If D removes its gasoline at the terminal rack, B is liable for tax because B holds the inventory position to the gasoline as reflected on A's records.

Under the 1987 proposed regulations and the subsequent Notices, the owner of the gasoline at the time of removal at the rack (D) in the above example) would have been liable for tax. This allowed certain persons to obscure the identity of the taxpayer through the use of a complex chain of sales often involving little more than change in title to the gasoline. The rule in these proposed regulations is intended to allow the Service to easily identify the person liable for tax.

3. *Joint and several liability.* Section 48.4081–2(c) generally provides that the terminal operator is jointly and severally liable for the tax if the position holder is not a gasoline registrant. The terminal operator avoids liability for tax even though the position holder is not in fact registered if the terminal operator (1) is a gasoline registrant, (2) obtains from the position holder a notification certificate (as described in § 48.4081–5), signed under penalties of perjury, that contains the position holder's registration number, (3) does not know that any information in the certificate is false, and (4) has verified the accuracy of the notification certificate in accordance with IRS procedures. The IRS plans to issue guidance on these verification procedures soon. The practice of Notice 87–83, under which a copy of a Certificate of Registry could be used as a notification of a registration number, is eliminated.

B. Additional Taxable Events

Section 48.4081–3 provides rules for taxing events other than the removal of gasoline at the terminal rack. The taxes imposed under this section are in addition to the tax imposed under § 48.4081–2 on the removal of gasoline at the terminal rack.

1. *Removal from a refinery.* Section 48.4081–3(b) imposes a tax on the removal of gasoline from a refinery if the refiner or the owner of the gasoline before its removal by bulk transfer is not a gasoline registrant, or the gasoline is not removed by bulk transfer. The refiner is liable for this tax.

2. *Entry into the United States.* Section 48.4081–3(c) imposes a tax on the entry of gasoline into the United States for consumption, use, or warehousing if the entry is by bulk transfer and the enterer is not a gasoline registrant or if the gasoline is not entered by bulk transfer. The enterer is liable for this tax. Under § 48.4081–1(g), the "enterer" is generally the importer of record (under customs law) with respect to the gasoline. If the importer of record is acting as an agent, however, the person for whom the importer of record is acting is treated as the enterer.

3. *Removal from a terminal by an unregistered position holder.* Section

48.4081–3(d) imposes a tax on the removal of gasoline from a terminal by bulk transfer if the position holder with respect to the gasoline is not a gasoline registrant. The position holder is liable for this tax. The terminal operator is jointly and severally liable for the tax unless the terminal operator meets the conditions described in part IV.A.3., above.

4. *Bulk transfers not received at an approved terminal or refinery.* Section 48.4081–3(e) imposes a tax on a bulk transfer of gasoline that is not received at an approved terminal or refinery. The person liable for this tax is the owner of the gasoline at the time of its receipt at the terminal or refinery. However, the owner of the gasoline avoids liability if it meets conditions similar to those described in part IV.A.3., above.

The IRS is considering publishing a list of all approved terminals and refineries as an alternative to requiring a notification certificate. Comments are requested on the desirability of this alternative.

5. *Tax on sales within the bulk transfer/terminal system to unregistered persons.* Section 48.4081–3(f) imposes a tax on the sale of gasoline located within the bulk transfer/terminal system to a person that is not a gasoline registrant if tax previously has not been imposed on such gasoline. The seller and the unregistered buyer are jointly and severally liable for the tax. The seller avoids liability, however, and only the buyer is liable if the seller meets conditions similar to those described in part IV.A.3., above.

Under § 48.4081–3(f)(2)(iii), a seller liable for tax must provide information on its tax return relating to these sales. This provision is effective for sales on or after July 1, 1991.

Section 48.4081–1(r) generally defines the term "sale" to be the transfer of title to, or substantial incidents of ownership in, gasoline for consideration. However, a transfer of title to, or substantial incidents of ownership in, gasoline within a terminal is not a sale unless the buyer also becomes the position holder of the gasoline on the records of the terminal operator. Thus, in the example in part IV.A.2., above, the transfers of title to gasoline from B to C and from C to D are not sales. Tax would not be imposed on those transfers under § 48.4081–3(e) even if C and D are not gasoline registrants. Tax would, however, be imposed under § 48.4081–2(b) on D's removal at the terminal rack. Under 48.4081–2(c), B would be liable for that tax.

Consistent with the definition of the term "sale," the proposed regulations change the existing definition of the term "throughputter." Under the 1987 proposed regulations, a throughputter was defined as any person that (1) receives transfers of gasoline from refiners, importers, terminal operators, or other throughputters; (2) stores the gasoline in a terminal; and (3) owns the gasoline or holds the inventory position to the gasoline (as reflected on the records of the terminal operator) at the time of removal or sale from a terminal.

Under § 48.4081–1(u), however, the term "throughputter" is limited to mean any person that (1) owns gasoline within the bulk transfer/terminal system (other than in a terminal), or (2) is a position holder. Thus, in the example in part IV.A.2., above, C and D are not throughputters because they are not position holders. Traders are classified as throughputters if they own gasoline within the bulk transfer/terminal system but outside of the terminal.

6. *Removal or sale by a blender.* Section 48.4081–3(g) imposes a tax on the removal or sale by a blender of blended gasoline produced by the blender. Section 48.4081–1(c) defines the term "blended gasoline" to mean a mixture of (1) previously taxed gasoline, and (2) any substance that has not been subject to the gasoline tax other than de minimis amounts of products such as carburetor detergent, or the alcohol content of gasohol. Section 48.4081–1(d) defines the term "blender" to mean any person that produces blended gasoline outside the bulk transfer/terminal system. To avoid double taxation of the previously taxed gasoline, the regulations provide that only the untaxed portion of blended gasoline is subject to the tax. The blender is liable for this tax.

C. Gasoline Blend Stocks and Additives

1. *Definition.* Section 48.4081–1(j) lists the only products that are treated as gasoline blend stocks and additives. This list is identical to the list in Rev. Rul. 88–70, except that antioxidant and carburetor detergent have been deleted and the following products have been added: ethyl tertiary butyl ether (ETBE), transmix (an interface between products in a pipeline) containing gasoline, and any mixture of two or more gasoline blend stocks and additives if such mixture is not gasoline. The Commissioner may add to the list of gasoline blend stocks and additives by revenue ruling or other administrative pronouncement.

2. *Tax treatment under Notice 88–16.* Under Notice 88–16, a registered person may sell gasoline blend stocks and additives tax free to another registered person regardless of whether such sales are within the bulk transfer/terminal system and whether the gasoline will be used by the buyer to produce gasoline. An unregistered person generally may buy gasoline blend stocks and additives tax free from any other person if the seller gives the buyer a disclosure statement stating the buyer's responsibilities if the buyer uses the products to produce gasoline and the buyer gives the seller a certificate stating that the buyer will not use the gasoline blend stocks and additives to blend with or add to gasoline.

3. *Tax treatment under the proposed regulations.* Under the proposed regulations, gasoline blend stocks and additives are generally treated the same as products that are commonly or commercially known or sold as gasoline. Thus, gasoline blend stocks and additives may be removed by bulk transfer from a refinery or terminal tax free only by a gasoline registrant, entered into the United States by bulk transfer tax free only by a gasoline registrant, and sold tax free within the bulk transfer/terminal system only to a gasoline registrant. However, the proposed regulations generally allow gasoline blend stocks and additives to be removed from the bulk transfer/terminal system tax free, entered into the United States by nonbulk transfer tax free, and sold outside the bulk transfer/terminal system tax free, so long as the gasoline blend stocks and additives are not used to produce gasoline.

Under § 48.4081–4(b)(1)(i), tax is not imposed on the removal or entry of gasoline blend stocks and additives by nonbulk transfer not in connection with a sale if the person that would otherwise be liable for tax is a gasoline registrant and the gasoline blend stocks and additives are used other than in the production of gasoline.

Under § 48.4081–4(b)(1)(ii), tax is not imposed on the removal or entry of gasoline blend stocks and additives by nonbulk transfer in connection with a sale if the person that would otherwise be liable for tax is a gasoline registrant, has an unexpired certificate (described in § 48.4081–4(c)) from its buyer, and has no reason to believe that any information in the certificate is false.

If a removal or entry of gasoline blend stocks and additives qualifies for either of these exemptions, tax may be imposed on a subsequent sale outside the bulk transfer/terminal system. Under § 48.4081–4(b)(1)(iii), tax is imposed on the subsequent sale unless the seller has an unexpired certificate (described in § 48.4081–4(c)) from its buyer and has no reason to believe that

any information in the certificate is false. The seller is liable for this tax.

The certificate described in § 48.4081-4(c) states that the gasoline blend stocks and additives covered by the certificate will not be used to produce gasoline. The certificate may cover a single sale or a series of sales for a period up to one year from the date the certificate is signed by the buyer. The IRS may withdraw the right of a buyer to provide a certificate if the buyer uses the blend stocks and additives bought under the certificate to produce gasoline.

Under section 48.4081-4(b)(2), ETBE, MTBE, TAME, and TBA may also be removed or entered tax free by nonbulk transfer if they are received at an approved refinery or terminal. These transfers are tax free even if the products will be used to produce gasoline.

Under § 48.4081-4(b)(3), a bulk transfer of gasoline blend stocks and additives to a registered industrial user is not subject to tax. Section 48.4081-1(1) defines the term "industrial user" to mean any person that receives gasoline blend stocks and additives by bulk transfer for its own use in the manufacture of products other than gasoline (as defined in § 48.4081-1(i)(1)).

D. Gasohol

Section 48.4081-6 provides rules relating to gasohol.

Under § 48.4081-6(c), as under Notice 89-101, tax on a removal of gasoline at the terminal rack (or an entry) is generally computed at the gasohol roduction tax rate if a registered gasohol blender uses the gasoline to produce gasohol. The gasohol production tax rate applies to a removal (or entry) in connection with a sale if the person liable for tax is a gasoline registrant, has an unexpired certificate (described in § 48.4081-6(c)(2)), and has no reason to believe that any information in the certificate is false. The certificate described in § 48.4081-6(c)(2) states that (1) the buyer is a registered gasohol blender, (2) the number provided in the certificate is the buyer's registration number and (3) the buyer will use the gasoline to produce gasohol within 24 hours after buying the gasoline. The certificate to be used by a registered gasohol blender may cover all gasoline bought by the blender under a specified account number for up to one year from the date the certificate is signed by the blender.

The 24-hour requirement is provided becasue the legislative history to a 1988 amendment to section 4081(c) indicates that Congress intended the reduced rate to be allowed only if the alcohol and gasoline are bought contemporaneously. See H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. II-179 (1988) in connection with section 6104(a) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647).

If a registered gasohol blender buys gasoline at the gasohol production tax rate under a certificate but then resells the gasoline, the blender is liable for additional tax under the failure to blend rule of § 48.4081-6(g)(2). In addition, the blender's registration may be revoked. Rules relating to registration revocation will be the subject of a subsequent notice of proposed rulemaking.

Gasoline registrants that remove or enter gasoline for their own gasohol production also qualify for the gasohol production tax rate if they are registered gasohol blenders and satisfy the 24-hour requirement. This is a change from Notice 89-101, which allowed a gasoline registrant to delay blending until the due date of the tax payment for the period in which the taxable event occurred. The change is needed to provide equal treatment of registered gasohol blenders that operate only outside of the terminal and those gasohol blenders that are also gasoline registrants.

The definition of the term "alcohol" and rules relating to later separation and failure to blend are generally similar to existing § 48.4081-2. The proposed regulations do not address the tolerance rule for determining the percentage of alcohol required for gasohol or the later blending rule because they are the subject of another notice of proposed rulemaking, PS-093-88, which was published in the Federal Register on February 25, 1991 (56 FR 7627).

Unlike Notice 89-101, these proposed regulations do not contain any reporting requirement relating to gasohol. Reporting requirements for gasohol blenders will be the subject of a subsequent notice of proposed rulemaking.

E. Refunds Under Section 4081(e)

Beginning July 1, 1991, section 4081 may impose tax more than once on a particular volume of gasoline. For example, gasoline sold to an unregistered person inside the bulk transfer/terminal system is taxed on that sale (the "first tax") and taxed again (the "second tax") when it is removed at the terminal rack. Under these circumstances, § 48.4081-7 provides that a refund of tax, but not a credit, may be allowed to the person that paid the second tax to the government if certain prescribed conditions are met.

One condition is that the person that paid the second tax must file a timely claim for a refund on Form 843, Claim for Refund and Request for Abatement. Section 48.4081-7(d) sets forth the information that must be provided in the claim. The required information includes: (1) The identity of the person that paid the first tax and every owner of the gasoline in the chain of sales between that person and the claimant; (2) a statement, signed under penalties of perjury, from the person that paid the first tax certifying that such person has not claimed or received a credit with respect to, or refund of, the first tax and will not do so; and (3) evidence showing that the first claimant has met the conditions of allowance of section 6416(a) with respect to the second tax.

As another condition, the person that paid the first tax to the government on sales within the bulk transfer/terminal system after June 30, 1991, must include with its return of the first tax the statement require by § 48.4081-3(f)(2)(iii) providing the identity of the person to whom it sold the gasoline, the date and location of the sale, and the volume and type of gasoline sold.

Under § 48.4081-7(e), a claim for refund may not be filed until after the claimant has filed a tax return with respect to the second tax.

F. Management of Gasoline

Section § 48.4081-8 provides that gallons of gasoline may be measured on the basis of actual volumetric gallons, gallons adjusted to 60 degrees Fahrenheit, or any other temperature adjustment method approved by the Commissioner. This provision incorporates Rev. Rule. 72-615, 1972-2 C.B. 569.

G. Effective Date

These regulations are proposed to be effective on January 1, 1992, with two exceptions. Section 48.4081-3(f)(2)(iii) (requiring information reporting by certain sellers) is proposed to be effective for sales on or after July 1, 1991. Section 48.4081-7 (relating to refunds under section 4081(e)) is proposed to be effective July 1, 1991.

V. *Guidance for the period beginning July 1, 1991, and ending December 31, 1991.* The 1990 Act amendments relating to the points at which the gasoline tax is imposed are effective July 1, 1991, even though the proposed regulations generally are not effective until January 1, 1992. Thus, under the 1990 Act amendments, on or after July 1, 1991, tax may be imposed on gasoline more than once before it leaves the bulk transfer/terminal system. For example, the removal of gasoline from any terminal at the rack is taxed regardless of whether

tax already has been imposed on the same gasoline.

Between July 1, 1991, and December 31, 1991 (the "interim period"), liability for tax is determined under existing administrative guidance, but without regard to whether a prior tax has been imposed with respect to the same gasoline or whether the taxpayer is registered or required to be registered. For example, the owner of the gasoline immediately before it is removed at the terminal rack is liable for tax during the interim period, regardless of whether a prior tax has been imposed with respect to the same gasoline or whether the owner is registered or unregistered.

Otherwise, during the interim period, existing administrative guidance, as modified by § 48.4081-3(f)(2)(iii) and 48.4081-7, continues in effect. Thus, for example, taxpayers may rely on rules relating to registration, bulk transfers and qualified sales between registered taxpayers, gasoline, and gasoline blend stocks and additives.

VI. *Future regulations projects.* The Service intends to publish notices of proposed rulemaking relating to registration, bonding, general information reporting and credits and refunds.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests to Appear at Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (perferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held on November 25, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Frank Boland, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 48

Agriculture, Aircraft, Boats, Coal, Excise taxes, Furs, Jewelry, Motor fuels, Motor vehicles, Sporting goods, Tires.

Proposed Amendments to the Regulations

Accordingly, title 26, part 48 of the Code of Federal Regulations is proposed to be amended as follows:

PART 48—[AMENDED]

Paragraph 1. The authority for part 48 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * § 48.4081-4 also issued under 26 U.S.C. 4082(A); § 48.4081-6 also issued under 26 U.S.C. 4081(c)(1); § 48.4081-7 also issued under 26 U.S.C. 4081(e); * * *

Subpart H—[Amended]

Par. 2. Subpart H of part 48 is amended as follows:

1. New § 48.4081-0 is added.
2. Sections 48.4081-1 and 48.4081-2 are revised.
3. New § 48.4081-48.4081-3 through 48.4081-8 are added.
4. Sections 48.4082-1, 48.4083-1, 48.4083-2, 48.4084, and 48.4081-1 are removed.
5. The added and revised provisions read as follows:

§ 48.4081-0 Gasoline tax; table of contents.

This section lists captions contained in § 48.4081-1 through 48.4081-8.

(c) Effective date.

§ 48.4081–6 Gasoline tax; gasohol.

(a) Overview.
(b) Definitions.
(1) Alcohol.
(2) Gasohol. [Reserved]
(3) Gasohol blender.
(4) Registered gasohol blender.
(c) Rate of tax on gasoline removed or entered for gasohol production.
(1) In general.
(2) Certificate.
(d) Rate of tax on gasohol removed or entered.
(e) Tax rates.
(1) Gasohol production tax rate.
(2) Gasohol tax rate.
(f) Later blending. [Reserved]
(g) Later separation and failure to blend.
(1) Later separation.
(2) Failure to blend.
(h) Effective date.

§ 48.4081–7 Gasoline tax; refunds of gasoline tax under section 4081(e).

(a) Overview.
(b) Conditions to allowance of refund.
(c) Credit not allowed.
(d) Form and content of claim.
(e) Time for filing claim.
(f) Effective date.

§ 48.4081–8 Gasoline tax; measurement.

(a) In general.
(b) Effective Date.

§ 48.4081–1 Gasoline tax; definitions.

(a) *Overview.* This section provides definitions for purposes of the regulations relating to the gasoline tax imposed by section 4081.

(b) *Approved terminal or refinery.* The term *approved terminal or refinery* means a terminal or refinery that is operated by a terminal operator or refiner that is a gasoline registrant.

(c) *Blended gasoline.* The term *blended gasoline* means gasoline, that is a mixture of—

(1) Gasoline with respect to which tax has been imposed under section 4081(a); and

(2) Any substance with respect to which tax has not been imposed under section 4081(a), other than—

(i) A de minimis amount of a product such as carburetor detergent or oxidation inhibitor; or

(ii) The alcohol content of gasohol (as defined in § 48.4081–6(b)(2)).

(d) *Blender.* The term *blender* means any person that produces blended gasoline outside the bulk transfer/terminal system.

(e) *Bulk transfer.* The term *bulk transfer* means any transfer of gasoline by pipeline or vessel.

(f) *Bulk transfer/terminal system.* The term *bulk transfer/terminal system* (system) means the gasoline distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, gasoline in a refinery, pipeline, vessel, or terminal is in the system. Gasoline in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the system.

(g) *Enterer.* The term *enterer* generally means the importer of record (under customs law) with respect to the gasoline. However, if the importer of record is acting as an agent (for example, the importer of record is a customs broker engaged by the owner of the gasoline), the person for whom the agent is acting is the enterer. If there is no importer of record for gasoline entered into the United States, the owner of the gasoline at the time of entry is the enterer.

(h) *Entry into the United States.* Gasoline is entered into the United States (enterer) if, and entry occurs when, the gasoline is brought into the customs territory of the United States (the customs territory) and applicable customs law requires that the gasoline be entered into the customs territory for consumption, use, or warehousing.

(i) *Gasoline.* The term *gasoline* means—

(1) All products (including gasohol) as defined in § 48.4081–6(b)(2)) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blend stocks and additives.

(j) *Gasoline blend stocks and additives.* The term *gasoline blend stocks and additives* means—

(1) Alkylate;
(2) Butane;
(3) Butenes;
(4) Catalytically cracked gasoline;
(5) Coker gasoline;
(6) Debutanized natural gasoline;
(7) Ethyl tertiary butyl ether (ETBE);
(8) Hexane;
(9) Hydrocrackate;
(10) Isomerate;
(11) Methyl tertiary butyl ether (MTBE);
(12) Mixed xylene (not including any separated isomer of xylene);
(13) Pentane;
(14) Pentane mixture;
(15) Polymer gasoline;
(16) Raffinates;
(17) Reformate;
(18) Straight-run gasoline;
(19) Straight-run naphtha;
(20) Tertiary amyl methyl ether (TAME);
(21) Tertiary butyl alcohol (gasoline grade) (TBA);
(22) Thermally cracked gasoline;
(23) Toluene;
(24) Transmix containing gasoline;
(25) Any mixture of two or more of the products listed in (or designated under) this paragraph (j) if such mixture is not gasoline describe in paragraph (i)(1) of this section; and
(26) Any other product designated as a gasoline blend stock and additive by the Commissioner by revenue ruling or other administrative pronouncement.

(k) *Gasoline registrant.* The term *gasoline registrant* means an enterer, industrial user, refiner, terminal operator, or throughputter that is registered under the provisions of section 4101 and the regulations thereunder.

(l) *Industrial user.* The term *industrial user* means any person that receives gasoline blend stocks and additives by bulk transfer for its own use in the manufacture of products other than gasoline described in paragraph (i)(1) of this section.

(m) *Position holder.* The term *position holder* means, with respect to gasoline in a terminal, the person that holds the inventory position to the gasoline, as reflected on the records of the terminal operator. A person holds the inventory position with respect to gasoline when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal. The term also includes a terminal operator that owns gasoline in its terminal.

(n) *Rack.* The term *rack* means a mechanism for delivering gasoline from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

(o) *Refiner.* The term *refiner* means any person that owns, operates, or otherwise controls a refinery.

(p) *Refinery.* The term *refinery* means the equipment used to produced gasoline from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons, from which gasoline may be removed by pipeline, vessel, or rack. However, the term does not include a facility where only blended gasoline or gasohol (as defined in § 48.4081–6(b)(2)), and no other type of gasoline, is produced.

(q) *Removal.* The term *removal* means any physical transfer of gasoline, and any use of gasoline other than as a material in the production of gasoline or special fuels (as defined in § 48.4041–8(f)). However, gasoline is not removed when it evaporates or is otherwise lost or destroyed.

(r) *Sale*—(1) *In general.* The term *sale* means—

(i) The transfer of title to, or substantial incidents of ownership in, gasoline (other than gasoline in a terminal) to the buyer for a consideration, which may consist of money, services, or other property; or

(ii) The transfer of the inventory position with respect to gasoline in a terminal as reflected on the records of the terminal operator.

(2) *Example.* The following example illustrates the rule of this paragraph (r):

Example. B owns one million gallons of gasoline that is stored in A's terminal. B also is the position holder with respect to the gasoline. While the gasoline remains stored in the terminal, B transfers title to 200,000 gallons of the gasoline to C. C then transfers title to the 200,000 gallons to D. B continues to hold the inventory position with respect to the one million gallons. Because B continues to hold the inventory position with respect to the gasoline, the transfers of title to the gasoline from B to C and from C to D are not sales of gasoline.

(s) *Terminal.* The term *terminal* means a gasoline storage and distribution facility that is supplied by pipeline or vessel, and from which gasoline may be removed at a rack. However, the term does not include any facility at which gasoline blend stocks and additives are used in the manufacture of products other than gasoline (as defined in paragraph (i)(1) of this section) and from which no gasoline is removed.

(t) *Terminal operator.* The term *terminal operator* means any person that owns, operates, or otherwise controls a terminal.

(u) *Throughputter.* The term *throughputter* means any person that—

(1) Owns gasoline within the bulk transfer/terminal system (other than in a terminal); or

(2) Is a position holder.

(v) *Vessel.* The term *vessel* means a waterborne gasoline transporting vessel.

(w) *Effective date.* This section is effective January 1, 1992.

§ 48.4081–2 Gasoline tax; tax on removal at a terminal rack.

(a) *Overview.* This section provides the general rule that all removals of gasoline at a terminal rack are taxable and the position holder with respect to the gasoline is liable for the tax.

(b) *Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blend stocks and additives), tax is imposed on the removal of gasoline from a terminal if the gasoline is removed at the rack.

(c) *Liability for tax*—(1) *In general.* The position holder with respect to the gasoline is liable for the tax imposed under paragraph (b) of this section.

(2) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if—

(i) The position holder with respect to the gasoline is a person other than the terminal operator and is not a gasoline registrant; and

(ii) The terminal operator has not met the conditions of paragraph (c)(3) of this section.

(3) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under paragraph (c)(2) of this section if, at the time of the removal, the terminal operator—

(i) Is a gasoline registrant;

(ii) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder;

(iii) Does not know that any information in the notification certificate is false; and

(iv) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(d) *Rate of tax.* For the rate of tax generally, see section 4081. For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(e) *Effective date.* This section is effective January 1, 1992.

§ 48.4081–3 Gasoline tax; taxable events other than removal at the terminal rack.

(a) *Overview.* Although tax is always imposed when gasoline is removed at the terminal rack, tax is also imposed in certain other situations described in this section. This section provides rules for the imposition of tax when gasoline is removed from the refinery, entered into the United States, removed by bulk transfer from a terminal by an unregistered position holder, removed by bulk transfer and not received at an approved terminal or refinery, or sold to an unregistered person within the bulk transfer/terminal system. This section also provides rules for the imposition of tax when blended gasoline is removed or sold by the blender.

(b) *Tax on removal from a refinery*—(1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blend stocks and additives), a tax is imposed on the removal of gasoline from a refinery if—

(i) The removal is by bulk transfer and the refiner or the owner of the gasoline immediately before the removal is not a gasoline registrant; or

(ii) The removal is at the rack.

(2) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (b) of this section.

(3) *Rate of tax.* For the rate of tax generally, see section 4081. For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(c) *Tax on entry into the United States*—(1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blend stocks and additives), a tax is imposed on the entry of gasoline into the United States if—

(i) The entry is by bulk transfer and the enterer is not a gasoline registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax.* The enterer is liable for the tax imposed under paragraph (c) of this section.

(3) *Rate of tax.* For the rate of tax generally, see section 4081. For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(d) *Tax on bulk transfers from a terminal by an unregistered position holder*—(1) *In general.* A tax is imposed on the removal by bulk transfer of gasoline from a terminal if the position holder with respect to the gasoline is not registered.

(2) *Liability for tax*—(i) *In general.* The position holder with respect to the gasoline is liable for the tax imposed under paragraph (d)(1) of this section.

(ii) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (d)(1) of this section if—

(A) The position holder with respect to the gasoline is a person other than the terminal operator; and

(B) The terminal operator has not met the conditions of paragraph (d)(2)(iii) of this section.

(iii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (d)(2) if, at the time of the bulk transfer, the terminal operator—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder;

(C) Does not know that any information in the notification certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(3) *Rate of tax.* For the rate of tax, see section 4081.

(e) *Tax on bulk transfers not received at an approved terminal or refinery*—(1)

In general. Except as provided in § 48.4081-4 (relating to gasoline blend stocks and additives) a tax on gasoline is imposed if—

(i) Gasoline is removed by bulk transfer from a refinery or terminal, or entered by bulk transfer into the United States;

(ii) No tax was imposed on such removal or entry under paragraph (b), (c), or (d) of this section; and

(iii) Upon removal from the pipeline or vessel, the gasoline is not received at an approved terminal or refinery (or at another pipeline or vessel).

(2) *Liability for tax*—(i) *In general.* The owner of the gasoline when it is removed from the pipeline or vessel is liable for the tax imposed under paragraph (e)(1) of this section if the owner has not met the conditions of paragraph (e)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* An owner of gasoline is not liable for tax under paragraph (e)(2)(i) of this section if, at the time the gasoline is removed from the pipeline or vessel, the owner of the gasoline—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081-5) from the operator of the terminal or refinery where the gasoline is received;

(C) Does not know that any information in the notification certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(iii) *Liability of operator of the facility where the gasoline is received.* The operator of the facility where the gasoline is received is liable for the tax imposed under paragraph (e)(1) of this section if the owner of the gasoline has met the conditions of paragraph (e)(2)(ii) of this section and is jointly and severally liable for the tax if the owner has not met such conditions.

(3) *Rate of tax.* For the rate of tax, see section 4081.

(f) *Tax on sales within the bulk transfer/terminal system*—(1) *In general.* A tax is imposed on the sale of gasoline located within the bulk transfer/terminal system if the sale is to a person that is not a gasoline registrant and tax has not been imposed on such gasoline under § 48.4081-2, or paragraph (b), (c), (d), or (e) of this section.

(2) *Liability for tax*—(1) *In general.* The seller of the gasoline is liable for the tax imposed under paragraph (f)(1) of this section if the seller has not met the conditions of paragraph (f)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A seller is not liable for tax under paragraph (f)(2)(i) of this section if, at the time of the sale, the seller—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081-5) from the buyer;

(C) Does not know that any information in the certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(iii) *Reporting requirement of sellers liable for tax.* Each seller liable for tax under this paragraph (f) must include with its return of tax a statement providing—

(A) The name, address, and employer identification number of the person to whom it sold the gasoline subject to the tax;

(B) The date and location of the sale;

(C) The invoice number associated with the sale; and

(D) The volume and type of gasoline sold.

(3) *Liability of the buyer.* The buyer of the gasoline is liable for the tax imposed under paragraph (f)(1) of this section if the seller of the gasoline has met the conditions of paragraph (f)(2)(ii) of this section and is jointly and severally liable for the tax if the seller has not met such conditions.

(4) *Rate of tax.* For the rate of tax, see section 4081.

(g) *Tax on removal or sale by the blender*—(1) *In general.* A tax is imposed on the removal or sale of blended gasoline by the blender thereof. The number of gallons of blended gasoline subject to tax is the difference between the total number of gallons of blended gasoline removed or sold and the number of gallons of previously taxed gasoline used to produce the blended gasoline.

(2) *Liability for tax.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(3) *Rate of tax.* For the rate of tax see section 4081.

(4) *Example.* The following example illustrates the provisions of this paragraph (g) and § 48.4081-1(c):

Example. (i) X, a gasoline wholesale distributor, buys 10,000 gallons of gasoline at a terminal rack. The gasoline is delivered into a tank trailer. Tax is imposed under § 48.4081-2(b) when the gasoline is removed at the rack. X then goes to another location where 500 gallons of alcohol (a substance not subject to tax under section 4081) are delivered into the tank trailer already containing the 10,000 gallons of gasoline. The gasoline and alcohol are splash blended as X drives to X's retail service station where X pumps the blended gasoline into a storage tank for sale to consumers.

(ii) X is a blender within the meaning of § 48.4081-1(d) because X has produced blended gasoline, as defined in § 48.4081-1(c), by mixing the 10,000 gallons of gasoline on which tax has been imposed under § 48.4081-2(b) with 500 gallons of alcohol, a substance not subject to tax under section 4081. The 10,500 gallon mixture is not gasohol because it contains less than 10 percent alcohol. X, the blender, is liable for the tax imposed under § 48.4081-3(g) on the blended gasoline. The tax is imposed when the blended gasoline is removed from the tank trailer at the retail station. Tax is computed on 500 gallons, the number of gallons not previously subject to tax under section 4081.

(h) *Effective date*—(1) Except as provided in paragraph (h)(2) of this section, this section is effective January 1, 1992.

(2) Paragraph (f)(2)(iii) of this section (relating to reporting requirements for sellers of gasoline to unregistered persons) is effective for sales on or after July 1, 1991.

§ 48.4081-4 Gasoline tax; special rules for gasoline blend stocks and additives.

(a) *Overview.* This section provides rules exempting from tax certain removals, entries, and sales of gasoline blend stocks and additives. Generally, under prescribed conditions, tax is not imposed on gasoline blend stocks and additives that are not used to produce gasoline.

(b) *Special rules for gasoline blend stocks and additives*—(1) *Nonbulk removals and entries*—(i) *Removals and entries not in connection with sales.* Tax is not imposed under § 48.4081-2(b), 48.4081-3(b)(1)(ii), or 48.4081-3(c)(1)(ii) on the removal or entry of gasoline blend stocks and additives not in connection with a sale if—

(A) The person otherwise liable for tax under § 48.4081-2(c)(1) (the position holder), 48.4081-3(b)(2) (the refiner), or 48.4081-3(c)(2) (the enterer) is a gasoline registrant; and

(B) Such person does not use the gasoline blend stocks and additives to produce gasoline (as defined in § 48.4081-1(i)(1)).

(ii) *Removals and entries in connection with sales.* Tax is not imposed under § 48.4081-2(b), 48.4081-3(b)(1)(ii), or 48.4081-3(c)(1)(ii) on the removal or entry of gasoline blend stocks and additives in connection with a sale if—

(A) The person otherwise liable for tax under § 48.4081-2(c)(1) (the position holder), 48.4081-3(b)(2) (the refiner), or

48.4081-3(c)(2) (the enterer) is a gasoline registrant; and

(B) At the time of the sale, such person has an unexpired certificate (as described in paragraph (c) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(iii) *Tax on sales after removals or entries*—(A) *In general.* If paragraph (b)(1) (i) or (ii) of this section applies to the removal or entry of gasoline blend stocks and additives, tax is imposed on any sale of such blend stocks and additives unless, at the time of the sale, the seller—

(*1*) Has an unexpired certificate (as described in paragraph (c) of this section) from its buyer; and

(*2*) Has no reason to believe any information in the certificate is false.

(B) *Liability for tax.* The seller is liable for the tax imposed under paragraph (b)(1)(iii) of this section.

(C) *Rate of tax.* For the rate of tax generally, see section 4081.

(2) *Additional rule for nonbulk removals and entries of ETBE, MTBE, TAME, and TBA.* Tax is not imposed under § 48.4081-2(b), 48.4081-3(b)(1)(ii), or 48.4081-3(c)(1)(ii) on the removal or entry of ETBE, MTBE, TAME, or TBA that is received at a terminal or refinery if the person otherwise liable for tax under § 48.4081-2(c)(1) (the position holder), 48.4081-3(b)(2) (the refiner), or 48.4081-3(c)(2) (the enterer)—

(i) Is a gasoline registrant;

(ii) Has a unexpired notification certificate (described in § 48.4081-5) from the operator of the terminal or refinery where ETBE, MTBE, TAME, or TBA is received);

(iii) Does not know that any information in the certificate is false; and

(iv) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(3) *Bulk transfers to a registered industrial user.* Tax is not imposed under § 48.4081-3(e)(1) if, upon the removal of gasoline blend stocks and additives from a pipeline or vessel, the gasoline blend stocks and additives are received by a gasoline registrant that is registered as an industrial user.

(c) *Certificate*—(1) *In general.* The certificate to be provided by a buyer of gasoline blend stocks and additives consists of a statement that is signed by the buyer under penalties of perjury and contains the same information, in substantially the same form, as the model certificate provided in paragraph (c)(3) of this section. The certificate expires on the earliest of the following dates:

(i) The date one year after the certificate is signed.

(ii) The date a new certificate is provided to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(2) *Withdrawal of right to provide certificate.* The Internal Revenue Service may withdraw the right of a buyer of gasoline blend stocks and additives to provide a certificate under this paragraph (c) if such buyer uses gasoline blend stocks and additives to which a certificate applies in the production of gasoline or resells the gasoline blend stocks and additives without obtaining a certificate from its buyer. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(3) *Form of certificate.*

Certificate of Person Buying Gasoline Blend Stocks and Additives for Use Other Than in the Production of Gasoline

(To support tax-free sales under section 4081 of the Internal Revenue Code.)

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury.

The gasoline blend stocks and additives to which this certificate relates will not be used to produce gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here ——— and enter:

1. Invoice or delivery ticket number ———
2. ——— (number of gallons) of ——— (type of gasoline blend stocks and additives)

If this is a blanket certificate, check here ——— and enter:

1. Effective date ———
2. Expiration date ———
(period not to exceed 1 year)

3a. ——— (number of gallons) of ———
(type of gasoline blend stocks and additives)
or
3b. ——— (percentage) of ——— (type of gasoline blend stocks and additives)

4. Buyer account or order number(s) ———

Buyer will not claim a credit or refund under section 6427(h) of the Internal Revenue Code for any gasoline blend stocks and additives covered by this certificate.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer resells the gasoline blend stocks and additives to which this certificate relates, Buyer will be liable for tax if Buyer does not obtain a certificate from the purchaser stating that the gasoline blend stocks and additives will not be used to produce gasoline and Buyer does not comply with the conditions of § 48.4081-4(b) of the Manufacturers and Retailers Excise Tax Regulations.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Buyer that the right to provide a certificate has been withdrawn from a purchaser to which Buyer sells gasoline blend stocks and additives tax free.

Buyer understands that the fraudulent use of this statement may subject Buyer and all parties making such fraudulent use of this statement to a fine or imprisonment, or both, together with the costs of prosecution.

Signature ———
Date ———

Printed or typed name of person signing this certificate

Title ———
Name of Buyer ———
Employer identification number ———
Address of Buyer ———

(d) *Effective date.* This section is effective January 1, 1992.

§ 48.4081-5 Gasoline tax; notification certificate of gasoline registrant.

(a) *Overview.* This section sets forth requirements for the notification certificate used under §§ 48.4081-2(c)(3), 48.4081-3(d)(2)(iii), 48.4081-3(e)(2)(ii), 48.4081-3(f)(2)(ii) and 48.4081-4(b)(2) to notify another person of the gasoline registrant's registration number.

(b) *Certificate*—(1) *In general.* The certificate to be provided by a gasoline registrant consists of a statement that is signed by the registrant under penalties of perjury and contains the same information, in substantially the same form, as the model certificate provided in paragraph (b)(2) of this section. A copy of the certificate of registry issued to a registrant by the Internal Revenue Service is not a certificate described in this paragraph. The certificate expires on the earlier of the following dates:

(i) The date the registrant provides a new certificate.

(ii) The date the recipient of the certificate is notified by either the Internal Revenue Service or the registrant that the registrant's registration has been revoked or suspended.

A new certificate must be given if any information in the current certificate changes. The certificate may be

included as part of any business records normally used to document a sale.

(2) *Form of certificate.*

Notification Certificate of Gasoline Registrant

Name, address, and employer identification number of person receiving certificate

The undersigned gasoline registrant ("Registrant") hereby certifies under penalties of perjury that registration number ——— has been issued to Registrant, and such number has not been revoked or suspended by the Internal Revenue Service.

Registrant understands that the fraudulent use of this statement may subject Registrant and all parties making such fraudulent use of this statement to a fine or imprisonment, or both, together with the cost of prosecution.

Signature ———

Date ———

Printed or typed name of person signing this certificate

Title ———

Name of Registrant ———

Employer identification number ———

Address of Registrant ———

(c) *Effective date.* This section is effective January 1, 1992.

§ 48.4081–6 Gasoline tax; gasohol.

(a) *Overview.* This section provides additional definitions relating to gasohol, rules for determining the applicability of reduced rates of tax on a removal or entry of gasohol or of gasoline used to produce gasohol. Rules are also provided for the imposition of tax on the separation of gasoline from gasohol and the failure to use gasoline (which has been taxed at a reduced rate) to produce gasohol.

(b) *Definitions*—(1) *Alcohol*—(i) *In general; source of the alcohol.* Except as provided in paragraph (b)(1)(ii) of this section, the term *alcohol* means any alcohol that is not a derivative product of petroleum, natural gas, coal, or peat. Thus, the term includes methanol and ethanol that are not derived from petroleum, natural gas, coal, or peat. The term also includes alcohol produced either inside or outside the United States.

(ii) *Proof and denaturants.* The term "alcohol" does not include alcohol with a proof of less than 190 degrees of proof (determined without regard to added denaturants). If the alcohol added to a fuel/alcohol mixture (the "added alcohol") includes impurities or denaturants, the volume of alcohol in the mixture is determined under the following rules:

(A) The volume of alcohol in the mixture includes the volume of any impurities (other than added denaturants and any fuel with which the alcohol is mixed) that reduce the purity of the added alcohol to not less than 190 proof (determined without regard to added denaturants).

(B) The volume of alcohol in the mixture includes the volume of any approved denaturants that reduce the purity of the added alcohol, but only to the extent that the volume of the approved denaturants does not exceed 5% of the volume of the added alcohol (including the approved denaturants). If the volume of the approved denaturants exceeds 5% of the volume of the added alcohol, the excess over 5% is considered part of the nonalcohol content of the mixture.

(C) For purposes of this paragraph (b)(1)(ii), "approved denaturants" are any denaturants (including gasoline and nonalcohol fuel denaturants) that reduce the purity of the added alcohol and are added to such alcohol under a formula approved by the Secretary.

(2) *Gasohol.* [Reserved]

(3) *Gasohol blender.* The term *gasohol blender* means any person that regularly buys gasoline and alcohol and produces gasohol for use in its trade or business or for resale.

(4) *Registered gasohol blender.* The term *registered gasohol blender* means any person that is registered as a gasohol blender under section 4101 and the regulations thereunder.

(c) *Rate of tax on gasoline removed or entered for gasohol production*—(1) *In general.* The rate of tax imposed on gasoline under §§ 48.4081–2(b) (relating to tax imposed at the terminal rack), 48.4081–3(b)(ii) (relating to tax imposed at the refinery rack), or 48.4081–3(c)(1)(ii) (relating to tax imposed on nonbulk entries) is the gasohol production tax rate if—

(i) The person liable for tax under § 48.4081–2(c)(1) (the position holder), 48.4081–3(b)(2) (the refiner), or 48.4081–3(c)(2) (the enterer) is a gasoline registrant and a registered gasohol blender, and such person produces gasohol with such gasoline within 24 hours after removing or entering the gasoline; or

(ii) The gasoline is sold in connection with the removal or entry, the person liable for tax under § 48.4081–2(c)(1) (the position holder), 48.4081–3(b)(2) (the refiner), or 48.4081–3(c)(2) (the enterer) is a gasoline registrant and such person, at the time of the sale—

(A) Has an unexpired certificate (as described in paragraph (c)(2) of this section) from the buyer;

(B) Does not know that any information in the certificate is false; and

(C) Has verified, in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement, that the buyer is a registered gasohol blender.

(2) *Certificate*—(i) *In general.* The certificate to be provided by a registered gasohol blender consists of a statement that is signed by the registered gasohol blender under penalties of perjury and contains the same information, in substantially the same form, as the model certificate provided in paragraph (c)(2)(B) of this section. A copy of the certificate of registry issued to a gasohol blender by the Internal Revenue Service is not a certificate described in this paragraph. The certificate expires on the earliest of the following dates:

(A) The date one year after the certificate is signed.

(B) The date the registered gasohol blender provides a new certificate to the seller.

(C) The date the seller is notified by the Internal Revenue Service or the gasohol blender that the gasohol blender's registration has been revoked or suspended. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(ii) *Form of certificate.*

Certificate of Registered Gasohol Blender

(To support sales of gasoline at the gasohol production tax rate under section 4081(c) of the Internal Revenue Code)

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury.

Buyer is a registered gasohol blender with registration number ——— that has not been suspended or revoked by the Internal Revenue Service.

The gasoline bought under this certificate will be used by Buyer to produce gasohol (as defined in § 48.4081–(6)(b) of the Manufacturers and Retailers Excise Tax Regulations) within 24 hours after buying the gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here ——— and enter:

1. Account number ———
2. Number of gallons ———

If this is a blanket certificate, check here ——— and enter:

1. Effective date ———
2. Expiration date ———

(period not to exceed 1 year)

3a. Number of gallons ——— or

3b. Percentage of gallons ———

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4. Buyer account or order number(s)

Buyer will not claim a credit or refund under section 6427(f) of the Internal Revenue Code for any gasoline covered by this certificate.

Buyer agrees to provide seller with a new certificate if any information on this certificate changes.

Buyer understands that any use of the gasoline other than in the production of gasohol, or resale of the gasoline covered by this certificate, may result in the revocation of Buyer's registration.

Buyer understands that the fraudulent use of this statement may subject Buyer and all parties making such fraudulent use of this statement to a fine or imprisonment, or both, together with the costs of prosecution.

Signature ———

Date ———

———

Printed or typed name of person signing this certificate

Title ———

Name of Buyer ———

Employer identification number ———

Address of Buyer ———

(d) *Rate of tax on gasohol removed or entered.* The rate of tax imposed on removals or entries of any gasohol under §§ 48.4081-2(b), 48.4081-3(b)(1)(ii), and 48.4081-3(c)(1)(ii) is the gasohol tax rate.

(e) *Tax rates*—(1) *Gasohol production tax rate.* The gasohol production tax rate is the rate applicable under section 4081(c) to the type of gasohol produced.

(2) *Gasohol tax rate.* The gasohol tax rate is nine-tenths of the gasohol production tax rate applicable to the type of gasohol produced.

(f) *Later blending.* [Reserved]

(g) *Later separation and failure to blend*—(1) *Later separation*—(i) *Imposition of tax.* A tax is imposed on the removal or sale of gasoline separated from gasohol with respect to which tax was imposed at a rate described in paragraph (e) of this section or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1).

(ii) *Liability for tax.* The person that owns the gasohol at the time gasoline is separated from the gasohol is liable for the tax imposed under paragraph (g)(1)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (g)(1)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(2) *Failure to blend*—(i) *Imposition of tax.* A tax is imposed on the entry, removal, or sale of gasoline with respect to which tax was imposed at the gasohol production tax rate but which was not blended into gasohol.

(ii) *Liability for tax*—(A) In the case of gasoline with respect to which tax was imposed at the gasohol production rate under paragraph (c)(1)(i) of this section (relating to entries and removals not in connection with sales), the person liable for the tax imposed by paragraph (g)(2)(i) of this section is the person that was liable for tax under paragraph (c)(1)(i) of this section.

(B) In the case of gasoline with respect to which tax was imposed at the gasohol production rate under paragraph (c)(1)(ii) of this section (relating to entries and removals in connection with sales), the person liable for the tax imposed under paragraph (g)(2)(i) of this section is the person that bought the gasoline at the gasohol production rate.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (g)(2)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(h) *Effective date.* This section is effective on January 1, 1992.

§ 48.4081-7 Gasoline tax; refunds of gasoline tax under section 4081(e).

(a) *Overview.* This section provides rules under which a person paying tax to the government imposed by section 4081 may receive a refund (but not a credit) if a prior tax was paid to the government under section 4081 with respect to the same gasoline.

(b) *Conditions to allowance of refund.* No claim for refund shall be allowed under this section unless—

(1) A tax imposed by section 4081 with respect to any gasoline was paid to the government (and not credited or refunded) (the "first tax");

(2) Another tax imposed by section 4081 with respect to the same gasoline also was paid to the government (the "second tax");

(3) The person that paid the second tax to the government has filed a timely claim for a refund that contains the information required under paragraph (d) of this section; and

(4) If the first tax was imposed on a sale of gasoline within the bulk transfer/terminal system to an unregistered person after June 30, 1991, the person that paid the first tax to the government has included with its return the statement under § 48.4081-3(f)(2)(iii).

(c) *Credit not allowed.* No credit against any tax imposed by the Internal Revenue Code is allowed under this § 48.4081-7.

(d) *Form and content of claim.* The claim for refund under this section shall be made by the person that paid the second tax. The claim must be made on Form 843, Claim for Refund and Request for Abatement (or such other form as the Commissioner may designate), in accordance with the instructions on the form. The form shall be marked "Section 4081(e) Claim" at the top. Claims for refunds under this section 4081(e) shall not be included on a form with a claim for a refund under any other provision of the Internal Revenue Code. Each claim for a refund under this section must contain the following information with respect to the gasoline covered by the claim:

(1) The volume and type of gasoline.

(2) The name, address, employer identification number, and registration number of the person that paid the first tax on the gasoline.

(3) The name, address, and employer identification number of every owner of the gasoline in the chain of sales between the person that paid the first tax on the gasoline and the claimant.

(4) A copy of the invoice or other record of sale relating to each sale of the gasoline in the chain of sales between the person that paid the first tax to the government and the claimant.

(5) The date on which the claimant bought the gasoline.

(6) The location at which the claimant bought the gasoline.

(7) The date on which the claimant incurred the tax liability to which the claim relates.

(8) A statement, signed under penalties of perjury, of the person that paid the first tax certifying that such person has not claimed or received a credit with respect to, or refund of, the first tax and will not do so.

(9) Evidence establishing that the claimant—

(i) Has not included the amount of the second tax in the sale price of the gasoline and has not collected the amount of that tax from the person that purchased the gasoline;

(ii) Has repaid the amount of that tax to the ultimate purchaser of the gasoline or

(iii) Has obtained the written consent of the ultimate purchaser to the making of the refund.

(e) *Time for filing claim.* A claim for refund under this section may be filed any time after the claimant has filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Effective date.* This section is effective July 1, 1991.

§ 48.4081-8 Gasoline tax; measurement.

(a) *In general.* For purposes of the tax imposed by section 4081, gallons of gasoline may be measured on the basis of—

(1) Actual volumetric gallons,

(2) Gallons adjusted to 60 degrees Fahrenheit, or

(3) Any other temperature adjustment method approved by the Commissioner.

(b) *Effective Date*. This section is effective January 1, 1992.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.
[FR Doc. 91-20171 Filed 8-26-91; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment No. 25 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to revise the Ohio program to be as effective as the corresponding Federal regulations regarding revegetation success. The amendment contains rule revisions and Administrative Record information describing the statistically valid sampling method which Ohio proposes to use to evaluate revegetation success. The amendment also proposes to delete one of the ground cover success standards against which Ohio will compare the results of its proposed sampling method.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 26, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on September 23, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 11, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

On December 15, 1989 (54 FR 51395), the Director of OSM announced his decision on Ohio's initial submission of Revised Program Amendment No. 25. In that decision, the Director found that Ohio had not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a). The Director therefore continued the requirement at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid technique to evaluate revegetation success and provided additional time for Ohio to amend its program.

By letter dated December 12, 1989 (Administrative Record No. OH-1245), Ohio proposed a continuation of Revised Program Amendment Number 25. In this continuation, Ohio proposed to revise Section 1501:13-9-15 of the Ohio Administrative Code (OAC) to include a statistically valid method of evaluating revegetation success in order to satisfy the OSM requirement at 30 CFR 935.16(f).

On January 8, 1990, OSM published a notice in the **Federal Register** (55 FR 649) announcing receipt of Ohio's proposed continuation of Revised Program Amendment Number 25 and inviting public comment on its adequacy. The public comment period ended on February 7, 1990. The public hearing scheduled for February 2, 1990, was not held because no one requested an opportunity to testify.

By letter dated March 23, 1990 (Administrative Record No. OH-1292), OSM notified Ohio that the proposed revisions to OAC Section 1501:13-9-15 were less effective than the Federal regulations at 30 CFR 816.116(a) because Ohio proposed to use statistically valid sampling methods only on "questionable" areas.

By letter dated July 24, 1990 (Ohio Administrative Record No. OH-1343), Ohio submitted further proposed revisions to OAC Section 1501:13-9-15 which were intended to respond to OSM's comments of March 23, 1990. Ohio proposed to revise paragraph (I)(1) to specify that success of revegetation shall be measured using a statistically valid sampling technique with a ninety percent statistical confidence interval (i.e. one-sided test with 0.10 alpha error). Ohio also proposed to revise paragraph (I)(3)(c)(iv) to delete the requirement that, for Phase III bond release, species planted must meet the standard that no single area with less than thirty percent cover shall exceed the lesser of three thousand square feet or 0.3 percent of the land affected.

On August 10, 1990, OSM published a notice in the **Federal Register** (55 FR 32643) announcing receipt of Ohio's further revisions to the continuation of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on September 10, 1990. The public hearing scheduled for September 4, 1990, was not held because no one requested an opportunity to testify.

By letter dated October 24, 1990 (Administrative Record No. OH-1398), OSH provided Ohio with its questions and comments about the additional revisions submitted on July 24, 1990. OSM requested that Ohio provide the details of Ohio's statistically valid sampling method for OSM's review and approval. OSM also requested that Ohio provide a justification for the proposed deletion of the vegetation standard limiting the size of areas with less than thirty percent vegetative cover.

By letter dated March 1, 1991 (Administrative Record No. OH–1471), Ohio submitted administrative record information in support of the revisions proposed on July 24, 1990, and intended to respond to OSM's comments of October 24, 1990. This Administrative Record information provided the details of Ohio's proposed statistically valid method of sampling revegetation success and was intended to justify the deletion of the standard for areas with less than thirty percent vegetative cover. On March 27, 1991, OSM published a notice in the **Federal Register** (56 FR 12691) announcing receipt of Ohio's March 1, 1991, Administrative Record information in support of Revised Program Amendment No. 25 and inviting public comment on its adequacy.

By letter dated March 21, 1991 (Administrative Record No. OH–1489), Ohio withdrew its March 1, 1991, submission of Administrative Record information. Ohio also withdrew the revisions to Ohio Administrative Code Section 1501:13–9–15 paragraphs (I)(1) and (I)(3)(c)(iv) which the State proposed on July 24, 1990. OSM announced Ohio's withdrawal of the July 24, 1990, and March 1, 1991, amendment submissions in the **Federal Register** on May 7, 1991 (56 FR 21113).

By letter dated June 18, 1991, Ohio submitted an informal version of Revised Program Amendment Number 25 for preliminary review by OSM. This informal submission proposed that Ohio will use two visual estimates of revegetation success followed by statistical verification of those visual estimates. In this informal submission, Ohio proposed to retain the revegetation standard limiting the size of areas with less than thirty percent vegetative cover.

By letter dated August 9, 1991 (Administrative Record No. OH–1556), Ohio withdrew the informal submission of June 18, 1991, and resubmitted a formal version of Revised Program Amendment Number 25. In this formal amendment submission, Ohio proposes two revisions to Ohio Administrative Code (OAC) Section 1501:13–9–15:

(1) Paragraph (I)(3)(c)(i)(d): Ohio is proposing to delete this paragraph which contains the revegetation standard limiting the size of areas with less than thirty percent vegetative cover. This paragraph currently provides that, in order for a bonded land segment to be considered successful for Phase III bond release, no single area within that segment with less than thirty percent cover shall exceed the lesser of three thousand square feet or 0.3 percent of the land affected in that segment.

(2) Paragraph (I)(3)(c)(ii): Ohio is proposing to add this new paragraph stating that "Success of the ground-cover [for phase III bond release] shall be measured using a statistically valid sampling technique with a ninety per cent statistical confidence interval (i.e. one-sided test with 0.10 alpha error."

As part of its August 9, 1991, resubmission, Ohio also reinstated the March 1, 1991, Administrative Record information which provides the details of Ohio's proposed statistically valid sampling method modeled on the Rennie-Farmer Stick Method. The March 1, 1991, Administrative Record information also proposes justification to support Ohio's proposed deletion of its vegetation standard limiting the size of areas with less than thirty percent vegetative cover.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on September 11, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91–20446 Filed 8–26–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposal rule.

SUMMARY: This proposed rule would revise the regulations governing planning for National Forest System lands to make explicit that, once a species has been listed as threatened or endangered under the Endangered Species Act, the requirements of the Endangered Species Act supersede the planning requirement that fish and wildlife habitat be managed "to maintain viable populations of native and desired non-native species within the planning area." The rule is necessary to respond to a recent court ruling that the requirement in the planning regulations to maintain a viable population applies to species listed under the Endangered Species Act. Public comment is invited.

DATES: Comments must be received in writing by September 26, 1991.

ADDRESSES: Send written comments to the Land Management Planning Staff (1920), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director, Land Management Planning, Third Floor, Central Wing, Auditor's Building, 14th and Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead (202-447-5933) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Larry Larson, Assistant Director, Land Management Planning; or Joyce Parker, Program Analyst; 202-447-5933.

SUPPLEMENTARY INFORMATION:

Background

The rules at 36 CFR part 219 govern land and resource management planning for National Forest System lands under the National Forest Management Act (16 USC 1600 *et seq.*). The rule at 36 CFR 219.19 provides that fish and wildlife habitat be managed "to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." The Department's interpretation of 36 CFR 219.19 has been that this provision is superseded by the requirements of the Endangered Species Act of 1973, as amended, for species listed as threatened or endangered under that Act.

On March 7, 1991, the District Court for the Western District of Washington held that the requirement in 36 CFR 219.19 as currently written applies to species listed under the Endangered Species Act. *Seattle Audubon Society et al.* v. *Evans, et al.*, No. 89-160WD. This holding is contrary to the Department's interpretation of its regulation. Accordingly, It is necessary to amend 36 CFR 219.19 to make explicit that, once a species is listed under the Endangered Species Act, the planning requirement to maintain viable populations no longer applies to that species.

Legal Analysis

Listing a species under the Endangered Species Act constitutes the determination that the species is in danger of extinction or likely to become in danger of extinction in the foreseeable future. Once a species is listed, all federal agencies must comply with the Endangered Species Act requirements. Therefore, once a species located on National Forest System lands is listed as threatened or endangered, the viability requirement of 36 CFR 219.19 no longer applies. It is superseded by the requirements of the Endangered Species Act.

The Endangered Species Act is a comprehensive statutory scheme administered by the Department of the Interior for preventing extinction of animal or plant species. The Secretary of the Interior (Secretary) is to determine whether a species is in danger of extinction or likely to become endangered within the foreseeable future. 16 USC 1533(a)(1). This determination is to be made "solely on the basis of the best scientific and commercial data available." 16 USC 1533(b). Once a species is listed under the Endangered Species Act, all federal agencies must ensure that no agency action "is likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical habitat]." 16 USC 1536(a)(2). Federal agencies are required to consult with the Secretary on any prospective action which may affect a listed species. 16 USC 1536(a)(3). After a review of the language of the Endangered Species Act and its legislative history, the Supreme Court found a conscious decision by Congress to give endangered species a priority over the "primary missions" of federal agencies. *TVA* v. *Hill*, 437 US 153, 185 (1978). Once a species has reached a point where it no longer is threatened or endangered, it can be removed, or delisted, from Endangered Species Act protection. 16 USC 1533(c)(2).

The comprehensive Endangered Species Act scheme stands in sharp contrast with the wildlife requirements of the National Forest Management Act. 16 USC 1600 *et seq.* The National Forest Management Act is primarily a planning statute, designed to guide development, amendment, and revision of Forest Plans for the multiple use and sustained yield of the nation's national forests. See 16 USC 1604. Its goals and mandates are broader, and therefore less detailed, than those of the Endangered Species Act. The National Forest Management Act requires that the Secretary of Agriculture promulgate regulations specifying guidelines for development of Forest Plans to achieve the goals of the Resources Planning Act Program that "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives * * *." 16 USC 1604(g)(3)(B). The National Forest Management Act does not specifically address fish and wildlife viability; that is done in the planning regulations at 36 CFR 219.19.

The National Forest Management Act establishes no statutory scheme to provide for diversity. The diversity provision in the Act does not mandate any particular level of diversity of plant and animal communities, but rather requires that this issue be considered in the context of the discretionary multiple-use mix of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. The National Forest Management Act and the regulations thereunder apply only to National Forest System lands and not to state, private, or other Federal lands. The multiple-use mandate of the National Forest Management Act and the Multiple-Use, Sustained Yield Act (16 USC 528-531) has been held to provide discretion, not set concrete limits on National Forest management. *Perkins* v. *Bergland*, 608 F.2d 803, 806 (9th Cir. 1979) and *Big Hole Ranchers Ass'n.* v. *Forest Service*, 686 F.Supp. 256, 264 (D.Mont. 1988).

In contrast to the National Forest Management Act and the Multiple-Use, Sustained Yield Act, the Endangered Species Act provides a complete statutory scheme for species found by the Secretary of Interior to need its protection. Congress made clear its exceptions for all Federal agencies with regard to listed species. Congress enacted the Endangered Species Act under the commerce power of the U.S. Constitution and the reach of the Endangered Species Act's protections and prohibitions regarding listed species is to private, state, and Federal lands. The Endangered Species Act also has provisions for designation of critical habitat, preparation of recovery plans for listed species, citizen enforcement, Federal Court jurisdiction, and criminal penalties for its violation. As the Supreme Court has held, Congress found the duties toward listed species are a higher priority than Federal agency missions. The discretion that the Department of Agriculture has regarding the multiple use management of the National Forests is overridden by its duties under the Endangered Species Act toward listed species.

The Chief of the Forest Service has interpreted 36 CFR 219.19 in an appeal decision regarding the Chequamegon National Forest Plan. In the January 29, 1990 Chequamegon decision (Appeal Nos. 1732, 1747, and 1760), the Chief stated there is no requirement for the Forest Service to evaluate viability of a species listed as threatened or endangered under the Endangered Species Act. The Chief's administrative interpretations in appeal decisions are entitled to due deference, *Intermountain Forest Industry Assn.* v. *Lyng*, 683 F. Supp. 1330, 1342 (D. Wyo. 1988), and an agency's interpretation of its own regulations is controlling, unless clearly erroneous or inconsistent with the regulation itself. *Robertson* v. *Methow*

Valley Citizens Council, 109 S. Ct. 1835, 1850 (1989).

Moreover, the only specific requirements of the National Forest Management Act regulations that do address threatened or endangered species are already part of the more elaborate requirements of the Endangered Species Act. The rule at 36 CFR 219.19(a)(7) calls for compliance with the Endangered Species Act by prescribing measures to prevent destruction or adverse modification of critical habitat designated pursuant to section 4 of the Endangered Species Act. 16 USC 1533(a)(3)(A).

Accordingly, the Department proposes to revise 36 CFR 219.19 by adding to the introductory paragraph a sentence that explicitly states that once a species has been listed under the Endangered Species Act, the viability requirement in that section no longer applies.

Relationship to Plans To Revise 36 CFR Part 219

On February 15, 1991, the Forest Service issued an Advance Notice of Proposed Rulemaking concerning Land and Resource Management planning (56 FR 6508). The advance notice is a preliminary proposal to issue a regulation at 36 CFR part 219 entitled "Implementing and Changing Land and Resource Management Plans." In the advance notice, the preliminary proposal for management of threatened and endangered species explicitly states that the regulatory requirement to maintain viable populations of plant and animal species does not apply to species listed under the Endangered Species Act. Thus, the amendment to 36 CFR 219.19 in this proposed rule is consistent with the advance notice. However, due to the March 7, 1991, court decision, it is necessary to make explicit now the Department's interpretation of 36 CFR 219.19 rather than as part of the proposed rulemaking announced by the advance notice.

The public comment period on the Advance Notice of Proposed Rulemaking closed on May 16, 1991. A substantial number of comments were received on the relationship between the requirement to maintain viable populations and the requirements of the Endangered Species Act. The agency will consider the public comment received on this issue in response to the advance notice as well as the comments received in response to this proposed rulemaking as it prepares the final rule for 36 CFR 219.19.

Environmental Impact

Based on environmental analysis, this proposed rule would not have a significant effect on the human environment; therefore, an environmental impact statement will not be prepared. The change is procedural only, making clear the existing agency interpretation of its regulation. Copies of the environmental assessment and finding of no significant impact may be obtained by writing or calling the persons or offices listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT.**

Regulatory Impact

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact statement is not required for this proposed rulemaking. The rule merely makes clear the agency's interpretation of its regulation. The proposed rule, therefore, would not cause a major increase in costs or prices to consumers, individual industries, State, Federal, or local government agencies or geographic region. It would not have an annual effect on the economy of $100 million or more, or have significant adverse effect on competition, employment, investment, productivity, innovation, or ability of United States based enterprises to compete with foreign based enterprises.

This proposed rule also will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule is limited to instructing Forest Service employees on how to prepare forest plans, and the proposed rule imposes no indirect costs or requirements on small entities. It also imposes no paperwork or recordkeeping requirement as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 36 CFR Part 219

Land and resource management planning and National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 219 of title 36 of the Code of Federal Regulations as follows:

PART 219 SUBPART A—NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING

1. The authority citation for Subpart A continues to read:

Authority: 16 U.S.C. 1604, 1613, and 5 U.S.C. 301.

2. Revise the introductory paragraph of § 219.19 to read as follows:

§ 219.19 Fish and wildlife resource.

Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area. However, once a species has been listed under the Endangered Species Act of 1973, as amended, the viability requirement of this section no longer applies to that species.

* * * * *

Dated: June 11, 1991.

James R. Moseley,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 91-20641 Filed 8-26-91; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3989-7]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking (WI7-1-5163).

SUMMARY: USEPA is proposing to disapprove a State submission as a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This proposed revision was submitted by the Wisconsin Department of Natural Resources (WDNR) as an internal offset (alternative emission control plan or "bubble") and transfer efficiency (TE) credit plan for all coating lines used on miscellaneous metal parts and products (except for those engaged in the application of high performance architectural coatings) at the Masco Corporation (Masco) facility located in Milwaukee, Wisconsin.

USEPA is disapproving this proposed SIP revision because (1) the emissions baseline of the proposed internal offset was incorrectly established in that it lacks documentation of the actual and allowable (SIP-based and reasonably available control technology (RACT)) emission rates at the time of Masco's application for the internal offset, (2) the

proposed internal offset does not provide a substantial net reduction in actual emissions as required for areas requiring new ozone demonstrations of attainment (the Milwaukee area was issued an ozone SIP-call on May 26, 1988, and reaffirmed as a nonattainment area for ozone by the Clean Air Act Amendments of 1990 and must therefore meet new requirements), (3) the proposed revision does not contain test methods for determining volatile organic compounds (VOC) or percent solids contents of coatings, (4) the proposed revision contains language which allows the WDNR to modify or rescind the proposal for unspecified reasons without an associated SIP revision submittal, (5) the revision does not identify exactly how many or which coating lines are involved in the internal offset, and (6) the revision does not provide a method for making adjustments to the TE in those cases where one or more of the coatings are applied using non-electrostatic applicators.

DATES: Comments on this revision and or the proposed USEPA action must be received by September 26, 1991.

ADDRESSES: Copies of the SIP revision, and technical support documents are available at the following addresses for review. (It is recommended that you telephone Charles C. Hatten at (312) 886-6031 before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air Toxics and Radiation Branch (5AT-26), 230 South Dearborn Street, Chicago, Illinois 60604

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible)

Gary V. Gulezian, Branch Chief, Air Toxics and Radiation Branch (5AT-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Charles C. Hatten, Regulation Development Section, Air Toxics and Radiation Branch (5AT-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On November 2, 1989, WDNR submitted to USEPA a proposed revision to the Wisconsin ozone SIP, for a site-specific internal offset and TE credit plan for all miscellaneous metal parts and products coating lines at Masco, except those engaged in the application of high performance architectural coatings. Masco is located in Milwaukee, Wisconsin, which is an urban nonattainment area for ozone. See 40 CFR 81.350. In a May 26, 1988, letter, USEPA issued a SIP-call to this area for its failure to attain the ozone National Ambient Air Quality Standard (NAAQS) by 1987. In addition to the SIP call, the 1990 CAAA adds specific new requirements.

Wisconsin's SIP

Under the existing federally approved SIP for Wisconsin, VOC emissions from surface coating of miscellaneous metal parts and products are subject to the Wisconsin Administrative Code (WAC) Section Natural Resources (NR) 422.15. NR 422.15 limits VOC emissions to 4.3 pounds per gallon (lbs/gal) of coating, excluding water for cured (baked) and air dried clear coatings; 3.5 lbs/gal of coating, excluding water, for high performance cured coatings and other (non-clear) air dried coatings; and 3.0 lbs/gal of coating, excluding water, for all other (non-clear and non-high performance) cured coatings. USEPA approved these rules as meeting the RACT[1] requirements of the Clean Air Act on January 11, 1980, (45 FR 2319) and June 21, 1982, (47 FR 26622).

In lieu of the above requirements, the WDNR has developed a bubble for all Masco's coating lines, except those coating lines using high-performance architectural coatings. At the time of their submittal, Masco's plan requested an internal offset under section NR 425.05(3) of the WAC and emission reduction credits gained through the use of high TE coating application systems, as regulated under the Methods of Compliance Section NR 422.04(2), to demonstrate compliance with NR 422.15.

The WDNR approved Masco's internal offset subject to the following conditions:

1. Coatings meeting the definition of high performance architectural coatings, Section NR 425.04(3) of the WAC, shall not be used in calculating compliance through internal offsets or in using improved TE.

2. The combined emission rate of VOC from miscellaneous metal parts and products coating lines shall be less than or equal to an emission rate determined by the following equation:

$$E = A_1B_1C_1/D_1 + A_2B_2C_2/D_2 + \ldots\ldots + A_nB_nC_n/D_n$$

Where: E is the total allowable emission rate from all of the coating lines involves in the internal offset in units of pounds per day; $A_{1,2,\ldots,n}$ is the allowable emission rate for each coating line pursuant to emission limits and other requirements in sections NR 422.01 to 422.15 in pounds per gallon of coating, excluding water, as applied; $B_{1,2,\ldots,n}$ is the amount of coating in gallons per day, excluding water and exempt solvent, as applied in each line; $D_{1,2,\ldots,n}$ is the theoretical volume fraction of solids in the coating necessary to meet the allowable emission rate of each coating line. The theoretical volume fraction is calculated from: $D_i = 1 - A_i / P_i$

Where P_i is the density of non-exempt solvent used in the coating delivered to the applicator in pounds of VOC per gallon of VOC.

3. The allowable emission rate determined from the equation in condition 2 may be adjusted from high TE coating application when electrostatic spray equipment is used by multiplying the value by 1.211 (reflecting an assumed 21.1 percent TE improvement).

4. Masco shall maintain its electrostatic spray equipment in good working condition and in accordance with the manufacturer's recommendations. The WDNR may require Masco to conduct testing to confirm the assumed TE improvement (condition 3) is being achieved.

5. VOC emissions from each coating line may not exceed 6.32 pounds per gallon of coating, excluding water and exempt solvent.

6. Masco shall maintain records of the following information:

a. For each coating as it is applied: (1) A unique coating identification name or number

(2) The applicable emission limit from Section NR 422.15

(3) Percent solids by volume

(4) Percent VOC by volume (excluding exempt solvents)

(5) Percent water and exempt solvent by volume

(6) Density of VOC

b. The amount of each coating used as applied in gallons per day, and the application method used.

c. Actual VOC emissions per day and allowable VOC emissions per day as calculated under condition 2 and adjusted for applicable TE improvements under condition 3. These records shall be maintained at the facility for a minimum of 3 years following the date on which the emissions occurred and shall be made

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economical feasibility.

available to the WDNR staff when requested.

7. Masco shall maintain the records required in condition 5 (the WDNR apparently meant condition 6 here) in a format acceptable to the WDNR.

For the first 3 full months following issuance of the approval, Masco was to provide the WDNR with a monthly report containing the information required in condition 6. The report was to be submitted to the WDNR within 15 days of the end of each month.

8. The WDNR retains the right to modify or rescind the approval because of Masco's failure to comply with the conditions of the approval.

USEPA's Policy on Evaluating Bubbles

On December 4, 1986 (51 FR 43814), USEPA issued its final Emission Trading Policy Statement (ETPS) entitled "General Principles for Creation, Banking, and Use of Emission Reduction Credits; Final Policy Statement and Accompanying Technical Issues Document". The ETPS requires that all emission reductions credited in an emissions trade be surplus (beyond the reductions required by the implementation of RACT), enforceable, quantifiable, and permanent.

In order to determine the quantity of surplus emission reductions, an emission baseline must be established for each source within a facility. The emissions baseline for any source is the product of three factors: Emission rate in units of emissions per unit production or throughput; capacity utilization; and hours of operation. For areas which are nonattainment for ozone and which require a new ozone demonstration of attainment (lacking an approved demonstration of attainment or an area which has been issued a current notice of SIP deficiency under section 110(a) (2) (H) of the Clean Air Act, such as Milwaukee, where Masco is located), the emission factors must be determined by using the lowest of actual, SIP-allowable or RACT-allowable values as of the time of the source's application to trade emissions. Actual values for capacity utilization and hours of operation must be determined using the source's average historical values for the 2-year period preceding the source's application to trade emissions unless another 2-year period is shown to be more representative of typical operations.

Bubbles for sources located in areas requiring new ozone demonstrations of attainment must also produce a substantial net reduction in actual emissions (i.e., a reduction of at least 20 percent [2] in the emissions remaining after the application of the baseline (51 FR 43832 and 51 FR 43839)) and must be accompanied by the State's assurances of consistency of the internal offset with progress towards attainment of the air quality standard and air quality planning goals.

USEPA's Evaluation of the Masco Revision

Masco's bubble is based on meeting the SIP-allowable emission limits as a daily weighted average over all coatings used during a given day. The baseline calculation procedure treats all VOC emissions as if they came from a single coating line. Coating use and emissions by coating line are not documented.

The proposed SIP allowed an additional 21.1 percent credit for increase TE when electrostatic coating equipment are used. This is accomplished by multiplying the total allowable emission rate for all of the coating lines, obtained by the equation, by 1.211. However, it does not provide a method for making adjustments to the TE credit in those cases where one or more of the coatings are applied using non-electrostatic applicators.

This proposed SIP revision also failed to include a test method to determine compliance on all the coating lines.[3] This proposal did not identify exactly how many or which coating lines are involved in the internal offset. In addition, the submission contains language which allows WDNR to modify or rescind the SIP for unspecified reasons without approval by the USEPA of an associated SIP revision submittal.[4]

[2] The requirement for a 20 percent reduction in the baseline may be waived for internal offset plans pending before the USEPA before the date of the publication of the ETPS (before December 4, 1986). In addition, guidance provided in the May 25, 1988, the guidance titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to appendix D, November 24, 1987, **Federal Register**", states that the 20 percent reduction in the baseline may be waived for any internal offset approved by a State prior to a relevant post-1987 SIP-call. It should be noted that the internal offset reviewed here meets neither of these tests because the State submitted the site-specific SIP revision after the issuance of the ETPS and approved the internal offset plan after the May 26, 1988, SIP-call for the Milwaukee area.

[3] USEPA has published an applicable compliance method at 40 CFR Part 60, Appendix A, Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

[4] To be approvable, the State would have to commit to submit to USEPA as a revision to the SIP any exemptions or alternative control plan approved by the WDNR.

The proposed internal offset plan for Masco is being proposed for disapproval for the following reasons:

1. The plan does not meet the requirements of the ETPS because it does not document the lowest of actual, SIP-allowable, or RACT-allowable emission rates at the time of Masco's application for the internal offset. Therefore, the calculated emissions baseline is unacceptable.

2. The plan does not meet the requirements of the ETPS because the emissions baseline has not been reduced by the 20 percent minimum downward adjustment required for internal offsets in nonattainment areas requiring new ozone demonstrations of attainment. The proposed bubble would not produce a substantial net reduction in actual emissions as required by the ETPS.

3. The revision does not contain test methods for determining VOC or percent solids contents of the coatings.

4. The revision contains language which allows WDNR to modify or rescind the SIP for unspecified reasons.

5. The revision does not identify exactly how many or which coating lines are involved in the internal offset.

6. The revision does not provide a method for making adjustments to the TE in those cases where one or more of the coatings are applied using non-electrostatic applicators.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for the conformance with the provisions of the 1990 Amendments enacted on November 15, 1990, in addition to the 1977 Amendments of the Clean Air Act. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provision of the law as it

on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

Under 4 U.S.C. Section 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities, because it impacts only one facility, Masco.

List of Subjects in 40 CFR Part 52

Carbon monoxide, Environmental protection, Hydrocarbon, Intergovernmental offices, Ozone, Pollution control.

Authority: 42 U.S.C. 7401–7642.

Dated: August 13, 1991.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91-20505 Filed 8-26-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 63

[AD-FRL-3989-1]

Procedures Document for Establishing Emissions From Sources of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft document availability; request for public comment.

SUMMARY: On June 13, 1991, EPA proposed "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants" (56 FR 27338). The proposed rule would implement the provisions in section 112(i)(5) of the Clean Air Act (the Act), as amended in 1990. Those provisions allow an existing source of hazardous air pollutant emissions to obtain a six-year extension of compliance with an emission standard promulgated pursuant to section 112(d) of the Act, if the source has achieved a reduction of 90 percent or more of hazardous air pollutant emissions (95 percent or more for particulate pollutants) by certain dates specified in the Act.

Today's notice announces the availability for review and comment of "Procedures for Establishing Emissions for Early Reduction Compliance Extensions—Volume 1," EPA-450/3-91-012a, a draft document that provides guidance to owners and operators of potential early reduction sources on determining emissions for the purpose of obtaining a compliance extension. This is the first of a series of emission estimating documents for determining emissions from sources that will be subject to maximum achievable control technology (MACT) standards under section 112(d) of the Act.

DATES: *Comments.* Comments must be received on or before October 11, 1991.

ADDRESSES: *Comments.* Comments should be submitted to Mr. David Beck, Chemicals and Petroleum Branch (MD-13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Document. The procedures document may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Procedures for Establishing Emissions for Early Reduction Compliance Extensions—Volume 1," EPA-450/3-91-012a.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5421.

SUPPLEMENTARY INFORMATION: On June 13, 1991, EPA proposed "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants" (56 FR 27338). The proposed rule would implement the provisions in Section 112(i)(5) of the Clean Air Act (Act) as amended in 1990. Those provisions allow an existing source of hazardous air pollutant emissions to obtain a 6-year extension of time for compliance with an emission standard promulgated pursuant to section 112(d) of the Act, if the source has achieved a reduction of 90 percent or more of hazardous air pollutant emissions (95 percent or more for particulate pollutants) by certain dates specified in the Act. If a source is granted a compliance date extension, an alternative emission limitation will be established by a permit issued under title V of the Act to ensure continued achievement of the 90 (95) percent reduction. The proposed rule establishes requirements and procedures for source owners and operators to follow in order to obtain compliance extensions and for reviewing agencies to follow in evaluating requests for extensions.

One requirement is that requests for a compliance extension must be submitted to a reviewing agency (EPA or a State agency with authority to implement this program) and must contain documentation that the emission reduction has been achieved. To document the reduction, the owner or operator must provide emission data for a base year (pre-reduction) and also for post-reduction emissions of hazardous air pollutants emitted by the source. The proposed rule establishes a presumption that source test results must be used to satisfactorily document either base year or post-reduction emissions. However, the rule also lists circumstances under which an owner or operator would be allowed to use methods other than source testing to document emissions for a source (for example, methods employing engineering calculations, material balances, or emission factors).

This notice announces the availability of a draft document that contains procedures for establishing emissions for three categories of sources. The three categories covered in this document are synthetic organic chemical manufacturing, chromium electroplating and chromic acid anodizing, and ethylene oxide sterilization. Documents covering additional industries to be regulated under section 112(d) of the Act will be issued periodically by EPA.

The intent of the document, and additional documents in this series, is to provide methods for establishing emissions for the purposes of the early reduction program with an emphasis on methods that can be used when source tests are not required. Owners or operators may use the document as a guide to preparing satisfactory emission reduction demonstrations for compliance extension requests. However, it is not the intent of the document to specify the only acceptable methods, other than source tests, for establishing emissions from a source. EPA recognizes that, for establishing emissions from a source. EPA recognizes that, depending on the circumstances, there may be other ways of satisfactorily showing that hazardous air pollutants have been reduced sufficiently to qualify for a compliance extension, and owners or operators are not precluded from using them. Regardless of the methods used, the emissions established for a source and submitted in a compliance extension request will undergo review to determine whether they are adequately documented for the purposes of the early reduction program.

As a result of public review and comment, the draft document may undergo some revision before being issued in final form. It is anticipated that a final version of the document will be available to the public by November of this year. If a source owner or operator makes a submittal for the early reduction program based on the information contained in the draft document and the draft document is revised in a way that invalidates the emissions data submitted, the owner or

operator will be given the opportunity to revise the emissions data to conform to the procedures in the final document. Such revision will be accomplished as part of the review process for early reduction submittals, as delineated in the proposed rule.

List of Subjects in 40 CFR Part 63

Air pollution control, early emission reductions, hazardous air pollutants, compliance extensions.

Dated: August 20, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-20508 Filed 8-26-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-8; FCC 91-247]

Television Satellite Stations Review of Policy and Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Through this Second Further Notice of Proposed Rule Making, the Commission requests comment on whether a station that qualifies as a satellite, and thus is exempt from the contour overlap rule, should continue to be exempt from the national multiple ownership restrictions.

DATES: Comments are due on or before October 10, 1991, and reply comments are due on or before October 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz or Kathleen O'Brien Ham, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Further Notice of Proposed Rule Making in MM Docket No. 87-8, adopted August 1, 1991, and released August 21, 1991. The complete text of this Second Further Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Synopsis of Second Further Notice of Proposed Rule Making

1. When the Commission adopted the current national multiple ownership limits in 1985, it indicated that satellites should be exempt because they primarily rebroadcast the programming of parent stations rather than originate programming. In the Report and Order (56 FR 31876, July 12, 1991) in this proceeding, the Commission abolished the limit on the amount of local programming that television satellite stations can originate (formerly five percent). In eliminating the five percent benchmark, the Commission noted that such action raised questions about the continued advisability of exempting satellite stations from the limitations of the national multiple ownership rule. Since television satellites are no longer limited in the amount of programming they may originate, the Commission therefore seeks comment in this Second Further Notice of Proposed Rule Making (Second Further Notice) on whether there remains any reason to continue exempting satellites from the national multiple ownership rule.

2. One rationale for retaining the exemption is that grant of a satellite application typically means that an underserved area will receive a service it would otherwise not receive. The Commission stated that the public interest would not appear to be served if such an application where denied solely because the applicant is at the national ownership limit. Such a denial would deprive an underserved area of service.

3. In this Second Further Notice, the Commission asks commenters to address whether there would be some point at which the benefits to the public of additional satellite stations (rather than no additional stations at all) would be outweighed by competing considerations. In this regard, commenters should address whether allowing ownership of satellite stations without a national ownership cap of some sort would reduce opportunities particularly for small entrepreneurs and new entrants to the industry. Commenters are also asked to address whether, if television satellite stations were to be subject to a national multiple ownership rule, the Commission should grandfather existing licensees that would otherwise be operating in violation of this rule. Finally, comments are requested on whether a national ownership benchmark other than the number of stations should be applied to television satellite stations.

Initial Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

I. Reason for Action: This action is instituted to seek comment on refinements to the Commission's television satellite policy. Specifically, the Commission proposes to determine whether satellite status should continue to exempt television satellites from the national multiple ownership rule.

II. Objective of Action: Our objective in this action is to reexamine the satellite exception to the national multiple ownership rule, in light of the changes to the Commission's approach toward satellites set forth in the Report and Order.

III. Legal Basis: Authority for the actions proposed in this Second Further Notice may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

IV. Reporting, Recordkeeping and Other Compliance Requirements: There is no additional impact.

V. Federal rules which Overlap, Duplicate or Conflict with the Proposed Rule: None.

VI. Description, Potential Impact and Number of Small Entities Involved: The entities affected will be television broadcast licensees whose satellite operations now, or in the future may, present a conflict with the restrictions set forth in § 73.3555(d) of the Commission's Rules. All broadcasters, including small entities, could benefit from the approach resulting from this Second Further Notice.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: None.

5. The Secretary shall send a copy of this Second Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte Consideration

6. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Information

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the

Commission's Rules, interested parties may file comments on or before October 10, 1991, and reply comments on or before October 25, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-20479 Filed 8-26-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking filed by the Nassau County (N.Y.) Traffic Safety Board. The petition requested amendments to Federal Motor Vehicle Safety Standard No. 108, Lamps Reflective Devices and Associated Equipment, to require a specific new running light system, as follows:

"1. Red coloring of lights on automobiles conform with the MUTCD [Manual on Uniform Traffic Control Devices] accepted colors of control devices, particularly that the Red Lights (center brake light and tail [brake] lights) should be visible ONLY when a car is stopping or braking;

2. Amber lights, including a center light, should be the rear running lights, effecting a triangle of amber lights for conspicuity and alertness, and which will synergically extinguish in coordination with a need for braking;

3. Daytime Running Lights should be required of white color for the front of the auto and amber for the rear and sides."

Since NHTSA has previously addressed these issues without finding reason to amend the standard, and because no new facts have been submitted supporting the requested amendments to Standard No. 108, the petition is denied.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (202) 366-5276.

SUPPLEMENTARY INFORMATION:

The Petition

On March 18, 1991, the agency received a petition for rulemaking from the Nassau County (N.Y.) Traffic Safety Board. The Board petitioned that Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices and Associated Equipment", be amended to require a specific lighting system on passenger cars. This system would include daytime running lights (DRL's), and prohibit the installation of red lamps except as stop lamps. It would also require amber taillamps, a new center high mounted amber taillamp, and amber rear side marker lamps.

Specifically, Nassau County is asking that passenger cars be equipped with the following lighting system:

1. DRL's with:

a. White lamps on the front;

b. Amber lamps on the sides in place of existing red rear side marker lamps, and amber lamps on the rear in place of the existing red taillamps;

c. A new rear, center highmounted amber running lamp;

2. The only external lamps permitted to be red would be the present stop lamps, including the center highmounted stop lamp (CHMSL), thus prohibiting red taillamps and red rear turn signals; and

3. Rear amber lamps that extinguish in coordination with activation of stop lamps.

The petitioner clams this system, using already understood colors from the Manual on Uniform Traffic Control Devices (MUTCD)—red=stop, amber=warning, and white=oncoming, would provide greater safety on the roadways, significantly reduce crashes, and be cost effective regulatory action.

The issue involved in the petition are as follows:

1. Mandating white DRL's on the front of automobiles.

2. Changing to amber the color of all red exterior lamps on passenger cars except those used for braking.

3. Requiring an amber center high mounted rear running lamp on passenger cars.

Regulatory Background

The agency has previously considered a number of rulemaking petitions raising issues to Nassau County's April 1991 petition. In April 1986, Nassau County submitted a petition to require DRLs on automobiles. In addition, the Insurance Institute for Highway Safety (IIHS) petitioned that DRLs be allowed on an optional basis. NHTSA responded to those petitions in a March 24, 1987 Notice of Proposed Rulemaking (52 FR 9316). The agency proposed to allow DRLs as optional equipment because existing data were insufficient to mandate DRLs. A notice terminating rulemaking was subsequently published on June 23, 1988 (53 FR 23673) since no vehicle manufacturers intended to offer DRLs.

In April of this year, the agency denied a petition from Charles Campell of Ormond Beach, Florida to amend Standard No. 108 to require DRLs on passenger vehicles (56 FR 14342). The basis for this denial was insufficient justification to mandate installation of DRLs. In the denial notice, the agency mentioned it was also reviewing a General Motors petition to allow DRL's on an optional basis. That petition is still being considered.

More recently, on July 19, NHTSA published a notice denying a petition from William Walters to allow use of his multiple use "CHMSL-like" device (56 FR 33239). The basis for this denial was the failure of the petitioner to submit any data justifying the suggested changes. In addition, the agency noted that there was extensive research demonstrating the effectiveness of the CHMSL solely as a "brake actuated" signal, operated only when the brake pedal is depressed.

Agency Response

Daytime Running Lamps

Nassau County petitioned for implementation of a specific DRL system on the front, rear, and side of vehicles. However, the petitioner presented no information to justify its request. For this reason, and because the agency has previously found no justification for mandating DRL's, this portion of the petition is denied.

NHTSA notes that the safety benefit of rear or side DRL's has yet to be established. Although not yet proven in the U.S., front DRL's may at least increase a driver's peripheral capability to detect a vehicle approaching at an angle or at an intersection. This advantage is not possible on rear and side-mounted DRL's. Any claim for benefits of rear DRL's must address shy such benefits are thought to exist. The petition makes no such claims. Instead, it simply makes a recommendation without providing any justification.

Red Exterior Lamps

Nassau County also petitioned for the elimination of red as permissible or required color for lamps, except for stop

lamps. Thus, the petition asks NHTSA to remove red as the required color for taillamps and rear side market lamps, and as a permitted color for rear turn signal lamps.

The apparent basis for this request is the desire to reserve red as the color that denotes the stopping function and serves no other purpose. The agency does not believe that a problem exists with the present regulatory color scheme. Red stop lamps can be distinguished from red taillamps because of the three-to-one or greater liminuous intensity differential specified in Standard No. 108. Further, the CHMSL (a single function stop lamp separately from taillamps) can never be misread a to its function. Following drivers can tell if the brakes of the preceding car are actuated by watching the CHMSL. This unambiguous signal eliminates the need for other rear stop lamp schemes and supports the requirement in Standard No. 108 that prohibits the combination of the CHMSL with any other lamps or reflective device.

The presence of amber taillamps on the rear of a passenger car instead of red taillamps could lead to confusion, given the fact that amber front parking lamps are permitted and generally used If the parking lamps are amber (fog lamps can be amber, too), and the taillamps are also amber, drivers could misidentify the front or rear of a moving vehicle in poor visibility conditions. This is not desirable. Therefore, NHTSA cannot agree that amber taillamps are appropriate, or that such a change could be in the best interest of safety. This portion of the petition is also denied

White Front DRL's

NHTSA is not convinced that white is the best color for front DRL's. The agency has conducted DRL tests (Referenced DOT report No. HS 807 193) on vehicles equipped with white and amber front DRL's and found, for DRL lens areas in the 50 to 100 square centimeter range, that the amber lamp produced greater average detection distances than white lamps. Hence, white DRL's may not be as beneficial as other colors, such as amber. Further, the mandating of white front DRL's would eliminate the use of yellow fog lamps, amber parking lamps, and amber turn signal lamps from being used as DRL's, which are currently present on some automobiles. For these reasons and because no support was presented for this request, the agency is denying this potion of the petition.

Amber Center High Mounted Taillamp

Nassau County suggests adding an amber center highmounted taillamp to the rear lighting array on passenger cars. NHTSA mandated the center stop lamp after research that such a lamp was effective in reducing the frequency and severity of rear collisions. To preserve the effectiveness of the lamp, the Standard prohibits its combination with any other lamp or reflective device. To place a center amber lamp in its vicinity would tend to dilute the effectiveness of the center stop lamp. As NHSTA noted in the denial of the Walters petition, mentioned above;

"* * * the agency is loath to alter any aspect of the CHMSL. While numerous requests for interpretations have been received which describe schemes for altering the CHMSL performance, in every case, the basis for negative agency response was the same: The CHMSL must present an unambiguous "brake" signal which is activated during service brake application. The agency has bee unwavering on this most basic safety aspect of the CHMSL."

Thus, NHTSA denies the petition on this point as well.

Rear Side Marker Lamp Color

NHTSA can see no merit in changing the color of rear side marker lamps from red to amber. The present difference in color between amber at the front and red at the rear provides an indicator of vehicle direction for other motorists. There might be some justification for change if the rear side marker lamp could be confused with the stop lamp, but the low intensity level of the rear-most red side marker lamp makes it unlikely to be mistaken for a stop lamp. NHTSA is reluctant to propose changes in rear side marker color unless safety benefits could be expected. No rationale was presented in the petition as to why the petitioned-for change would be expected to yield safety benefits. Therefore, NHTSA sees no reason to grant the petition on this point.

Denial

In accordance with 49 CFR part 552, the agency has completed its technical review of the petition, and has determined that there is no reasonable possibility that any of the requested amendments would be issued at the conclusion of a rulemaking proceeding. Therefore, the petition is denied in full.

Authority: 15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on August 21, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-20465 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 166
Tuesday, August 27, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Quarterly Summary of Federal, State, and Local Tax Revenue.

Form Number(s): F-71, F-72, F-73.

Agency Approval Number: 0607-0112.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 6,057 hours.

Number of Respondents: 6,006.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau conducts this survey on a quarterly basis to gather information on tax revenues collected by state and local tax collecting agencies. The Bureau uses the data to publish benchmark statistics on public sector taxes. The data are also used by the Bureau of Economic Analysis, the Federal Reserve Board, the Department of Treasury, and others to provide the most current information on the status of state and local governments.

Affected Public: State or local governments.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 22, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91-20481 Filed 8-26-91; 8:45 am]

BILLING CODE 3510-07-F

Foreign-Trade Zones Board

[Order No. 533]

Termination of Foreign-Trade Subzone 43A; Springfield and Oshtemo, MI

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on March 12, 1984, the Foreign-Trade Zones Board issued a grant of authority to the City of Battle Creek, authorizing the establishment of Foreign-Trade Subzone 43A (Board Order 244, 49 FR 10322, 3/20/84);

Whereas, the City of Battle Creek advised the Board on October 12, 1989 (FTZ Docket 27-89), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 43A;

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone No. 43A effective this date.

Signed at Washington, DC this 21st day of August 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 91-20535 Filed 8-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 534; FTZ Docket 39-91]

Temporary Extension of Foreign-Trade Subzone 23B CPS (Formerly Greater Buffalo Press) Ink Plant Chautauqua County, NY

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, in 1986, the Foreign-Trade Zones Board (the Board) granted authority to the County of Erie, New York, to establish Foreign-Trade Subzone 23B at the ink manufacturing facilities of the CPS division of Greater Buffalo Press, Inc. (GBP), Chautauqua County, New York, for a period of 5 years (ending 8/25/91) subject to extension, and subject to restrictions requiring the election of privileged foreign status (19 CFR 146.41) on pigments used in the production of ink sold to domestic printing plants not affiliated with GBP and on ink produced in excess of 21 million pounds annually (Board Order 332, FR 18468, 5/20/86);

Whereas, the ink manufacturing facilities of GBP were sold and are now operated as CPS Corporation, a subsidiary of INX International, Inc.;

Whereas, on July 2, 1991, the County of Erie made application to the Board for an indefinite extension of authority for Subzone 23B;

Whereas, the review of the request for an indefinite extension will not be completed by the August 25, 1991, expiration data; and,

Whereas, the FTZ Staff, in a preliminary review, finds that temporary extension of authority would be in the public interest pending completion of the review;

Now, Therefore, the Board hereby orders:

That subzone status for FTZ 23B is temporarily extended to February 25, 1992, subject to all of the other conditions in Board Order 332, pending completion of the review of the application (FTZ Doc. 39-91) for an indefinite time extension.

Signed at Washington, DC, this 21st day of August, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 91-20536 Filed 8-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 529]

Resolution and Order Approving the Application of the Port of Corpus Christi Authority for Removal of Restriction No. 4, Board Order 310, for Foreign-Trade Zone 122 Corpus Christi, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After reviewing the request submitted by the Port of Corpus Christi Authority, grantee of FTZ 122, Corpus Christi, Texas, for removal of Restriction #4 in Board Order 310 approving FTZ 122 (50 FR 38020, 10/19/85), requiring that all non-oil refinery sites be operated under a centralized inventory control system approved by the District Director of Customs, the Board, finding that requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, approves the request. This change will allow local Customs officials to determine control system requirements on an individual site basis.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Signed at Washington, DC, this 21st day of August 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-20537 Filed 8-26-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-301-701; C-301-702]

Electrical Conductor Aluminum Redraw Rod From Venezuela Final Affirmative Scope Ruling

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Final affirmative scope ruling.

SUMMARY: On February 1, 1990, the Department of Commerce published a preliminary affirmative scope ruling on electrical conductor aluminum redraw rod from Venezuela. We have now completed our inquiry and determine that .250 inch electrical conductor aluminum redraw wire falls within the scope of the antidumping and countervailing duty orders on electrical conductor aluminum redraw rod from Venezuela.

EFFECTIVE DATE: August 27, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 3434) a preliminary affirmative scope ruling on electrical conductor aluminum redraw rod from Venezuela pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Tariff Act). The Department has now completed that inquiry.

Scope of the Antidumping and Countervailing Duty Orders

The product covered by the antidumping and countervailing duty orders is certain electrical conductor aluminum redraw rod (EC rod), which is wrought rod of aluminum, electrically conductive and containing not less than 99 percent aluminum by weight. Until December 31, 1988, EC rod was classifiable under item numbers 618.1520 and 618.1540 of the Tariff Schedules of the United States Annotated (TSUSA). EC rod is currently classifiable under item numbers 7604.10.3010, 7604.10.3050, 7604.29.3010, 7604.29.3050, 7605.11.0030 and 7605.21.0030 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of Inquiry

The product which is the subject of this inquiry is .250 inch electrical conductor aluminum redraw wire (.250 wire) used to produce wire that is then incorporated into electrical conductor cables. The .250 wire subject to this inquiry is EC rod that has been processed through a wire drawing mill and, like EC rod, is an intermediate product that must be further drawn for use in electrical conductor cable products. However, because it is only practical to use .250 wire in the production of smaller diameter wires, .250 wire does not completely substitute for EC rod, which continues to be used for large and medium diameter wires.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary affirmative scope ruling. We received comments and rebuttals to comments from both the respondent, Suramerica de Aleaciones Laminadas S.A. (Sural), and the petitioner, Southwire Company. At request of the respondent, Sural, we held a public hearing on March 27, 1990.

Comment 1: Sural claims that the Department cannot expand the scope of an order to include a product imported prior to, and specifically excluded from, the investigation. To do so would lead to manipulation of the antidumping and countervailing duty laws by allowing petitioners to carefully craft the petition to ensure the outcome of an investigation.

Sural began exporting .144-inch redraw wire to the United States prior to the filing of the original petition, and Southwire specifically excluded wire from the scope of the investigation. Therefore, redraw wire cannot be considered in a scope inquiry. Additionally, the Court of International Trade's (CIT) reference to "new" products in *Diversified Products Corporation* v. *United States*, 572 F. Supp. 883 (Ct. Int'l Trade 1983) (*Diversified Products*) precludes a scope ruling on products that are not "new." It is the Department's practice to clarify the scope of an order only in two situations: First, where the product was specifically included (or presumed to have been included) in the original investigation; and, second, where the product was developed after the date of the order (*i.e.*, a "new product"), but was similar enough to the original product that it would have been covered by the order had it existed at the time.

Sural claims that the legislative history also limits itself to new products. The legislative history supporting section 781(c), under which the anti-circumvention petition was filed and under which the Department made its preliminary ruling, is applicable to products "* * * with minor alterations that contain features and technologies not in use in the class or kind of merchandise imported into the United States at the time of the original investigation * * *." (S. Rep. No. 71, 100th Cong., 1st Sess. 101 (1987)). The United States proposal to amend the General Agreement on Trade and Tariffs (GATT) Antidumping Code reinforces the apparent intent of section 781(c) and, if adopted, would allow GATT member states to "impose duties where subsequent to the issuance of a

dumping finding: Producers * * * begin exporting to the importing country altered or later developed merchandise." (United States Proposal for Improvements in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, GATT 26th Supp. BISD 171 (1980)).

Southwire replies that .250-inch redraw wire is the subject of the Department's inquiry, not .144-inch redraw wire, and .250-inch redraw wire was not a previously imported product. In addition, Southwire did not and could not have any knowledge that Sural was importing .144-inch wire as redraw wire. Only small quantities of .144-inch wire were being imported, and .144-inch wire is a standard grade used in the industry that has legitimate commercial uses other than as drawing stock. Therefore, it is on this basis that Southwire did not choose to include wire in its original petition.

Further, *Diversified Products* set no specific criteria limiting the Court's decision to new products. In a footnote to *Floral Trade Council* v. *United States*, 716 F. Supp. 1580, 1582 n.3 (CIT 1989), the Court observed that *Diversified Products* may be of use to the Department in making scope determinations regarding pre-existing products.

In addition, Southwire argues that an evaluation of the examples cited by Congress in the legislative history also proves that Congress did not intend to limit the statute's applicability to pre-existing products. By referring to the threading of unthreaded pipe and temper rolling of steel sheet, where both the base product and the altered product clearly existed prior to the filing of any petitions or the issuance of any antidumping or countervailing duty orders, Congress made it clear that the provision was intended to address all instances of circumvention, including those where the products in question existed prior to investigation by the Department.

Department's Position: We disagree with Sural. The .144-inch redraw wire that was imported prior to the filing of the petition requesting the antidumping/countervailing duty investigations was not included in the anti-circumvention application filed by petitioner and is not part of the Department's inquiry. The Department, therefore, cannot assume that .144-inch redraw wire possesses the same qualities as .250-inch redraw wire, and we would have to deal with that issue in a separate inquiry.

The Department concurs with petitioner's argument that *Diversified Products* is not confined to new products, but that the scope of an order may be clarified whenever there is a question as to whether a product falls within the same class or kind of merchandise defined by the scope of that order. As explained in Electrical Conductor Aluminum Redraw Rod from Venezuela; Preliminary Affirmative Scope Ruling (55 FR 3434; February 1, 1990) (Preliminary Scope Ruling), .250 wire falls within the same class or kind of merchandise as .375 EC rod because it meets the five criteria (physical characteristics, use, expectations of the ultimate consumer, channels of marketing and cost of modification) set forth in the legislative history of section 781(c) of the Tariff Act (S. Rep. No. 71, 100th Cong. 1st Sess. 134 (1987)).

Congress made it clear in the legislative history that it sought to address instances where, for example, the minor manipulation of a product would result in the reclassification of that product under the tariff schedules without meaningfully affecting its appearance or use. In fashioning this standard, Congress did not make exceptions for instances where the product was previously imported. Rather, section 781(c) simply directs the Department to include within the scope of an order "articles altered in form or appearance in minor respects * * *, whether or not included in the same tariff classification." As addressed extensively in the Preliminary Scope Ruling, the legislative history that pertains to section 781(c) of the Tariff Act presents a direct rebuttal to Sural's arguments and supports the Department's determination that .250 inch redraw wire is within the scope of the orders.

Comment 2: Sural claims that the legislative history pertaining to section 781(c) directs the Department to prove that the foreign producer intentionally sought to evade an antidumping or countervailing duty order before the Department may rule on circumvention.

Both the House and Senate reports (H.R. Rep. No. 40, 100th Cong., 1st Sess. 134 (1987) and S. Rep. No. 71, 100th Cong., 1st Sess. 101 (1987)) refer to elements of intent in their discussions of the circumvention provisions. The House report states that the anti-circumvention provision was "intended to foreclose the most obvious and damaging circumvention practices that had been exploited by foreign producers." The Senate report also alludes to an element of intent by stating that the provision is designed to prevent foreign producers from altering products in order to evade an order or investigation. The minor alterations provision, therefore, is designed to apply only to products that are altered with the intent to circumvent the Department's orders, and not to products developed prior to an order and in the normal course of business and product development. The .250 wire subject to this inquiry is not substitutable for .375 EC rod and does not diminish the effectiveness of the existing orders.

Southwire replies that the Department is not obligated to rule on intent under the provisions of section 781(c). The language of the provision itself is quite clear, precluding the need to refer to the legislative history for guidance. The antidumping and countervailing duty laws are meant to remedy the effect that dumping and subsidization have on competition in the United States without having to determine the intent of foreign exporters.

Department's Position: We agree with Southwire that the Department's mandate under section 781(c) is sufficiently clear. The law directs the Department to determine whether the product subject to inquiry meets the criteria of a product "altered in form or appearance in minor respects, * * *, whether or not included in the same tariff classification." The Department addressed that very question in its Preliminary Scope Ruling by determining that .250 wire is a minor alteration of .375 EC rod and belongs to the same class or kind of merchandise. There is no requirement of "intent" in the statute.

It is clear from the legislative history that Congress essentially considered the so-called anti-circumvention amendments, and section 781(c) in particular, as encompassing and codifying the Department's inherent, pre-existing authority to determine the scope of an antidumping or countervailing duty order. The Congress expressly excluded section 781(c) from the requirement that the Department notify the U.S. International Trade Commission of a decision to find certain merchandise within the scope of the order in recognition of the fact that many rulings concerning minor alterations would constitute routine scope determinations, in which the issue of whether circumvention was occurring would never arise. Ultimately, Congress' primary concern is to ensure the integrity of antidumping and countervailing duty orders issued by the Department.

Comment 3: Sural claims that, if the Department had evaluated the issue of intent as required, it would have been clear that there was no intent to evade the antidumping and countervailing duty

orders. If Sural intended to evade those orders, the shift in substitution of .250 wire imports for .375 EC rod imports would have been more dramatic. Additionally, there are a number of factors proving that Sural had no intention of evading the Department's orders. Sural began exporting .144 inch redraw wire to the United States before the original petition was filed and established a separate production process for redraw wire that required significant investment in new facilities. Moreover, .250 wire imports are only a fraction of monthly EC rod consumption, and companies are only able to use .250 wire for a small percentage of their operations.

Southwire claims that, if the Department had determined to include in its ruling an analysis of Sural's intent to evade the antidumping and countervailing duty orders, it is clear that Sural intended to evade those orders. The statistical data show imports of EC rod ceasing and imports of .250 wire commencing after the orders went into effect. Furthermore, Sural's production ratio of redraw rod to wire decreased and most sales of .250 wire were to a related party.

Department's Position: The Department is not required to and did not make a determination regarding intent for the reasons cited above in Comment 2.

Comment 4: Sural claims that .250 wire fills a market "niche" and is a separate and distinct product from .375 EC rod. Congress did not intend for the law to be applied in a "mechanical" fashion to "similar" or "related" products, but rather only to those altered products that diminish the effectiveness of an existing order. The .250 wire subject to this inquiry is a "niche" product that is used at significant cost savings in a few limited wire drawing operations; it does not replace .375 EC rod. In fact, companies must still use significant quantities of .375 EC rod. The Department overlooked the distinctions between .250 wire and .375 EC rod and, therefore, also overlooked the uniqueness of .250 wire.

Department's Position: We disagree. As we explained in the Preliminary Scope Ruling, .250 wire and .375 EC rod are used to make the same end products. Sural's claim that .250 wire is a "niche" product is based on the fact that .250 wire is not completely substitutable for .375 EC rod. These products are used in virtually the same manner, meet the same end-use expectations held by consumers, and the cost of modifying .250 wire represents only a small fraction of the overall difference in cost relative to the total value of the product, all of which confirms that .250 wire is properly included within the scope of the orders covering EC rod.

Comment 5: Sural claims that the Department incorrectly analyzed the facts in making its preliminary scope ruling because it only focused on the reasons for the differences in physical characteristics rather than the differences themselves. The Department ignored actual differences in physical characteristics between .250 wire and .375 EC rod, including the most important physical difference between the two products: The difference in diameter. It is precisely that difference that gives .250 wire its commercial value; customers will choose .250 wire over .375 EC rod when producing particular sizes of finished wire because of the cost saving they are able to realize. Furthermore, "wire" and "rod" are distinct industry terms based on consumer expectations derived expressly from differences in diameter. The Department also neglected to evaluate physical differences in electrical conductivity, temper, hardness, elongation at rupture and surface texture.

With regard to use of the merchandise, the Department failed to discuss how or why use of the two products differs. Because .250 wire can be drawn through smaller die machinery to make the same sizes of finished wire, consumers of .250 wire benefit from cost savings and more efficient use of machinery.

With regard to expectations of the ultimate consumer, the Department overgeneralized consumer expectations, stating that consumers expect to use both products in exactly the same manner—as redraw stock. In so doing, the Department failed to discuss the fact that the standards and settings for the wire drawing process are dependent on the choice of the final wire product and on whether the redraw stock is .375 EC rod or .250 wire.

Sural further argues that the Department glossed over important details concerning the channels of marketing for both .250 wire and .375 EC rod, ignoring the history and evolution of Sural's marketing of .250 wire. U.S. companies other than ACPC (Sural's related party in the United States) have purchased redraw wire. These companies have submitted affidavits detailing the benefits and cost savings derived from the use of .250 wire which, moreover, can only be used to a limited extent in a small number of operations. The Department should not penalize a foreign producer because the merchandise exported has not yet obtained a large number of customers.

Finally, the Department should not have calculated the cost of modification relative to the total value of the product Because aluminum comprises more than 90 percent of the total value of each product, the methodology used by the Department is misleading. The Department should have based its comparison on the significant variance in the cost of modification between the two products. Furthermore, the accuracy of the Department's methodology is also in doubt because of wide fluctuations in the price of aluminum during the period under inquiry.

Department's Position: We disagree. We did not ignore actual differences in physical characteristics as Sural claims. The Department's statement that the two products differ only because of the number of times that they have been passed through a wire drawing mill makes it self-evident that the two products differ in diameter. Moreover, even though physical differences in electrical conductivity, temper, hardness, elongation at rupture and surface texture result from drawing into a smaller diameter, the ultimate use of the two products is the same. The fact that "wire" and "rod" are distinct industry terms is also irrelevant. While different terms may imply different usage and expectations, in this case the products are used in the same manner as redraw stock.

As explained in the Preliminary Scope Ruling, the use of the merchandise and expectations of the ultimate consumer are not effectively different for the two products. While it is true that .250 wire has only limited applicability as a substitute for .375 EC rod, .250 wire is used to produce some of the same size wires previously fabricated from .375 EC rod. Sural's arguments concerning alleged cost savings and efficiency to the customer are not relevant because they are not factors to be considered in an analysis of use and expectations of the ultimate consumer. While there may be, as Sural claims, some economic benefit to the customer from using .250 wire, the ultimate use and expectations of the consumer are the same for both .250 wire and .375 EC rod. Accordingly, based on use of the merchandise and expectations of the consumer, we conclude that both .250 wire and .375 EC rod belong to the same class or kind of merchandise.

With regard to channels of marketing,

the Department has merely observed that the majority of sales of .250 wire are to ACPC, a related party, and that there were no sales of this product prior to the Department's orders in this case, and virtually no market for .250 wire other than sales to a related party. Furthermore, the Department can only make a judgment based on the facts at hand, and consequently, is not able to make market projections to decide if there is in fact a potential market for .250 redraw wire. Sural has provided no concrete evidence that there is a sustained market for .250 redraw wire.

Finally, the Department's methodology used for the cost of modification is based on the legislative history. The report of the Senate Finance Committee states: "the Commerce Department should consider such criteria as * * * the cost of any modification relative to the total value of the imported product." S. Rep. No. 71, 100th Cong., 1st Sess. 100 (June 12, 1987). With respect to Sural's argument that fluctuations in the price of aluminum render it impossible to accurately calculate cost of modification, we used an average base metal price in order to diminish the effects of price fluctuations. Moreover, any fluctuations occurring would equally affect both the calculations for .250 wire and .375 rod.

Final Affirmative Scope Ruling

After reviewing all of the comments received, we determine that .250 wire is included in the scope of the antidumping and countervailing duty orders on electrical conductor aluminum redraw rod from Venezuela.

The Department will instruct the Customs Service to continue to suspend liquidation and collect cash deposits of antidumping and countervailing duties on all shipments of electrical conductor aluminum redraw wire .250 inch or greater in diameter. As a result of this determination, the merchandise subject to these orders is classifiable under the following additional HTS item numbers: 7605.11.0090, 7605.19.0000, 7605.21.0090 and 7605.29.0000.

This final determination and notice are in accordance with section 781(c) of the Tariff Act (19 U.S.C. 1677j(c)).

Dated: August 21, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-20538 Filed 8-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Postponement of Preliminary Determination of Circumvention of Antidumping Duty Order: Portable Electric Typewriters From Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.)

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

EFFECTIVE DATE: August 27, 1991.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230, at (202) 377-0186 or (202) 377-5288, respectively.

Postponement of Preliminary Determination

On April 4, 1991, the Department initiated an anti-circumvention inquiry on the antidumping duty order of portable electric typewriters from Japan with respect to Brother Industries, Ltd. and Brother Industries (USA), Inc. (56 FR 14922, April 12, 1991). In that notice, we indicated that the preliminary determination in this inquiry would be issued on August 23, 1991. We find that additional time is required to render a preliminary determination in this proceeding. Therefore, we have postponed the preliminary determination until September 6, 1991. Accordingly, the new schedule is as follows:

- Preliminary Determination...September 6, 1991
- Case Hearing Briefs........ September 20, 1991
- Rebuttal Briefs................ September 27, 1991
- Hearing.....................................October 4, 1991
- Final Determination.............October 25, 1991

We intend to notify the International Trade Commission (ITC) in the event of an affirmative preliminary determination of circumvention, in accordance with section 781(e)(1) of the Act and 19 CFR 353.29(d)(7). Should consultation with the ITC be necessary, the post-preliminary determination schedule will be postponed by 60 days.

This notice is published pursuant to section 781(a) of the Act.

Dated: August 21, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-20539 Filed 8-26-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Macau; Correction

August 21, 1991.

In the letter to the Commissioner of Customs published in the **Federal Register** on August 2, 1991 (56 FR 37087), the amended 1991 import restraint level for Categories 445/446 should be 75,769 dozen.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-20480 Filed 8-26-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 26, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in

the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: August 21, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Recordkeeping Requirements for LEAs and SEAs Operating Chapter 1 Projects under Chapter 1 of Title I of ESEA.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden—Responses: 0.

Burden Hours: 0.

Recordkeeping Burden—Recordkeepers: 14,199.

Burden Hours: 367,936.

Abstract: State educational agencies, state agencies and local education agencies are required to keep such reports for subgrants for programs authorized under 34 CFR Part 200 pursuant to the Elementary and Secondary Education Act of 1965, as amended. The Department uses the information to ensure compliance with the requirements.

Office of Postsecondary Education

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or households; non-profit institutions.

Reporting Burden—Responses: 11,601,796.

Burden Hours: 1,599,846.

Recordkeeping Burden—Recordkeepers: 7,300.

Burden Hours: 522,531.

Abstract: The Student Air Report (SAR) is used to nctify applicants of their eligibility to receive Federal financial aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

[FR Doc. 91-20456 Filed 8-26-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Washington State Energy Office

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) and (D), it is making a financial assistance award to the Washington State Energy Office (WSEO) under Grant No. DE-FG01-89CE26597. The proposed grant will provide funding in the estimated amount of $66,425 for WSEO to develop a District Energy Regional Impact Model entitled "DERIM" and use the model to estimate regional and national energy efficiency and environmental benefits of district energy. Greater use of district heating and cooling as well as combined heat and power systems in our nation, in lieu of individual in-building systems, is a means of increasing overall efficiency of fossil energy utilization. The results of the proposed project will assist government officials with making recommendations on environmental energy policy that could lead toward national energy efficiency and reduction of emissions and pollutants throughout the U.S. The grant is being awarded to WSEO on a noncompetitive basis because the proposed work is a continuation of an activity presently being funded by DOE and competition would have a significant adverse impact on completion of the activity. WSEO is a unique organization with experience in developing software programs specifically designed to assess district energy systems.

The anticipated term of the proposed grant is 12 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Bernard G. Canlas, PR-322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-20469 Filed 8-26-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Civilian Radioactive Waste Management

Payments-Equal-To-Taxes Provisions of the Nuclear Waste Policy Act of 1982, as Amended; Interpretation and Procedures

AGENCY: Department of Energy.

ACTION: Notice of Interpretation and Procedures.

SUMMARY: The Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM), is publishing this Notice of Interpretation and Procedures (Notice) for certain of the payments-equal-to-taxes (PETT) provisions of the Nuclear Waste Policy Act of 1982, as amended (NWPA) (42 U.S.C. 10101 *et seq.*). This statute provides that DOE will make these payments to eligible States, affected units of local government, and affected Indian Tribes for activities related to siting, development, and operation of a high-level radioactive waste and spent-fuel repository, and any monitored retrievable storage (MRS) facility. The scope of this Notice is limited to site characterization activities related to the repository or MRS facility. Development and operational phases of the repository and MRS facility will be addressed at a later date. The jurisdictions are eligible for payments equivalent to the amount they would receive if authorized to tax the Federal site characterization activities at such site. This Notice incorporates DOE's response to public comments received on a Proposed Notice issued on March 7, 1990. Based on comments received and after further consideration, DOE has revised its proposed interpretation and procedures by (1) modifying the proposed geographical basis for determining which site characterization activities are eligible for inclusion in PETT calculations, and (2) giving eligible jurisdictions the opportunity to provide to DOE estimates of PETT, including the basis for such calculations. DOE has the responsibility to determine the amount of PETT, based in part, on the information provided by the eligible jurisdictions. For submission of information relative to PETT, see section

IV.C, Administrative Procedures, in this Notice.

ADDRESSES: Copies of documents referred to in this Notice (unless otherwise indicated) are available for public review (they may be photocopied for a fee) at DOE Headquarters reading room, 1000 Independence Avenue SW., room 1E–190, Washington, DC 20585, (202) 586–6020; Nevada Operations Office reading room, 2753 S. Highland, Las Vegas, NV 89109, (702) 295–1274; and the Richland Operations Office reading room, 825 Jadwin Avenue, Richland, WA 99352, (509) 376–8583.

Estimates of PETT for jurisdictions in Nevada should be sent to: Carl Gertz, Yucca Mountain Site Characterization Project Office, P.O. Box 98608, U.S. Department of Energy, Las Vegas, NV 89193, (702) 794–7920.

Estimates of PETT for jurisdiction in Washington should be sent to: John Anttonen, Richland Operations Office, 825 Jadwin Avenue, U.S. Department of Energy, Richland, WA 98352, (509) 376–7591.

FOR FURTHER INFORMATION CONTACT: Allen Benson, Office of External Relations, RW–5, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, Washington, DC 20585, (202) 586–2289.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM), today gives notice of its interpretation of certain of the PETT provisions of the NWPA, and of its general procedures for administering its responsibilities under those provisions.

II. Background

The NWPA assigns to the Secretary the responsibility for managing the disposal of spent nuclear fuel and high-level radioactive waste, and establishes the OCRWM for that purpose. Section 116(c)(3) of the NWPA as originally enacted, authorized PETT to those States and units of general local governments in which a candidate site for a repository was approved under section 112(c) of the NWPA.

Specifically, that language provided:

> The Secretary shall also grant to each State and unit of general local government in which a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such State and unit of general local government, respectively, would receive were they authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State and unit of general local government tax the other real property and industrial activities occurring within such State and unit of general local government. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

Section 118(b)(4) of the NWPA as originally enacted, authorized similar payments to affected Indian Tribes where a candidate site was approved.

On December 22, 1987, the Nuclear Waste Policy Amendments Act of 1987 was signed into law as part of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Amendments to the NWPA that are of relevance to the PETT provision include the following:

1. Section 116(c)(3) was amended to designate the State of Nevada and affected units of local government as the only jurisdictions eligible for PETT.

2. Section 149 was added, to extend PETT provisions under sections 116 and 118 to States, affected Indian Tribes, and affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

3. Section 2(31) now defines affected unit of local government as "* * * the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit."

4. It should be noted that section 118(b)(4), which applies to affected Indian Tribes, was not changed.

DOE has determined that DOE Order 2100.12, "Payments for Special Burdens and in Lieu of Taxes," is not applicable to the implementation of PETT under the NWPA. That order focuses on the calculation of payments by considering any benefits, as well as any burdens, to the community resulting from the presence of the DOE facility. The NWPA does not provide for any reduction of the burden on the basis of other benefits to the community.

Numerous meetings and exchanges of correspondence have occurred between DOE and the States, local governments, and Indian Tribes concerning PETT. Beginning in 1986, DOE met quarterly with the then potentially affected jurisdictions to discuss programmatic issues, including PETT. In addition, meetings with interested parties specifically to discuss PETT issues took place in Salt Lake City, Utah, in May 1987 and in Las Vegas, Nevada, in November 1987.

DOE published its Proposed Notice on March 7, 1990, for 60 days of public comment, and received comments from 10 interested parties. These comments are addressed and discussed in section III of this Notice. Consistent with the Proposed Notice and the comments received, DOE has modified its interpretation and general procedures, which are presented in section IV of this Notice.

III. Discussion of Issues Raised in Comments

In the Proposed Notice, DOE proposed to make payments equal to the taxes eligible jurisdictions would be entitled to if they were authorized to tax the federal site characterization activities occurring within the physical boundaries of the candidate sites as defined in the Environmental Assessments. The Proposed Notice described the criteria and guidance DOE would apply to determine the amount of PETT, and specified the requirements that a jurisdiction must meet to be eligible for PETT and the commencement and termination dates for PETT eligibility.

The following organizations submitted comments on the Proposed Notice:

The State of Nevada, Agency for Nuclear Projects, Nuclear Waste Project Office
The State of Washington, Office of the Governor
Nye County, Nevada, Department of Planning
Clark County, Nevada, Board of County Commissioners
Esmeralda County, Nevada, Board of County Commissioners
Lincoln County, Nevada, Board of County Commissioners
City of Caliente, Nevada, Nuclear Waste Project
Mid-Columbia (Washington) Consortium of Governments
The State of New Mexico, Energy, Minerals, and Natural Resources Department, Governor's Waste Isolation Pilot Plan (WIPP) Task Force
Carlsbad, New Mexico, Department of Development

Commenters addressed six basic issues:

A. Notice Process.
B. PETT Eligibility.
C. Computation of Payments.
D. Additional Meetings.
E. PETT Commencement and Termination.
F. Impact on Other Programs.

A. Notice Process

Commenters questioned the need for the Proposed Notice and DOE's proposed procedures for determining the amount of PETT. The State of Nevada claimed that provisions in the NWPA governing PETT are clear, and that DOE does not need to interpret them. Lincoln

County, Nevada, and the City of Caliente, Nevada, claimed that DOE's intent to consider PETT applications on a case-by-case basis leaves in doubt the need for a notice.

Clark County, Nevada, stated that DOE has the capability for determining whether requests are consistent with Congressional authorizing legislation, but the taxing jurisdictions have the responsibility for administering tax laws. Lincoln County, Nevada, commented that under Nevada law, it is the State and the affected units of local government that calculate tax liabilities, distribute tax bills, and collect tax revenues. The City of Caliente, Nevada, has concurred in Lincoln County's comments.

The NWPA requires that DOE make payments equal to taxes to eligible jurisdictions. These payments are not tax payments, but, are payments made by DOE pursuant to statute and therefore DOE must determine the appropriate amount of such payments. Although DOE could make such determinations on a case-by-case basis, DOE believes that the process being followed will be helpful in reaching consistent interpretations and application of the PETT provisions in the NWPA.

B. PETT Eligibility

This Notice addresses an affected jurisdiction's eligibility for PETT, but, does not address which units of local government contiguous to Nye County may be considered, at the discretion of the Secretary, to be "affected." Some commenters stated that DOE should reconsider its interpretation of which units of government are eligible for PETT, and what constitutes an affected unit of local government. Clark County, Nevada, and the New Mexico Governor's WIPP Task Force stated that school districts and other special purpose taxing districts should be eligible for PETT. A school district or other special purpose taxing district would be eligible to receive PETT if these districts have affected status and would have taxing authority over eligible site characterization activities, if the site characterization activities were not conducted by the Federal Government. DOE's interpretation and procedures allow for affected parties to determine which jurisdictions would have taxing authority over specific site characterization activities, if the site characterization activities were not conducted by the Federal Government. Affected parties will also determine if eligible activities should be evaluated "as a collective unit" under relevant tax law. These considerations, and all other bases used by the affected parties in computing PETT, will be considered by DOE in its determination of PETT.

Many commenters disagreed with DOE's proposed position that only activities at the candidates site should be eligible for PETT. Several commenters stated that Congress intended to provide "full tax equivalence" for eligible jurisdictions, and that DOE's definition of site is contrary to that intent. The commenters disagreed with DOE's contention that the term "at such site" as stated in the NEPA is the same as the "candidate site" depicted in the Environmental Assessment for the three sites recommended for characterization. The State of Washington stated that the use of "site" in other contexts and documents such as the Environmental Assessments, Site Characterization Plan, and Mission Plan refers to a much broader range of activities than only those carried out at the candidate site. Commenters further claimed that DOE's narrow definition of site would exclude site characterization work done off site, which should also be included in PETT calculations.

Section 116(c)(3)(A) of the NWPA provides, in pertinent part:

> [The] Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit or local government, respectively, would receive if authorized to tax *site characterization activities at such site*, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government. (Emphasis added).

In the March 7, 1990, Notice, DOE proposed to interpret "site characterization activities at such site" to mean those site characterization activities conducted within the area of land identified as a "candidate site" by DOE in chapter 3 of the final Environmental Assessment issued in May 1986. Upon a thorough review of this issue in light of the statements of commenters DOE now believes that a better interpretation of the subject phrase is that it means that PETT is available for site characterization activities associated with a candidate site coextensive with the jurisdiction's taxing authority, whether or not those activities are conducted on site.

When originally enacted in 1982, section 116(c)(3)(A) provided, in pertinent part:

> The Secretary shall also grant to each State and unit of general local government *in which a site for a repository is approved under section 112(c)* an amount each fiscal year equal to the amount such State and unit of general local government, respectively, would receive were they authorized to tax *site characterization activities at such site*, and the development and operation of such repository, as such State and unit of general local government tax the other real property and industrial activities occurring within such State and unit of general local government. (Emphasis added).

Thus the phrase "at such site" has its antecedent in the 1982 NWPA. DOE has reviewed the legislative history of the 1982 NWPA and now agrees that Congress intended that PETT provide full tax equivalence for eligible jurisdictions. For example, the United States House of Representatives, Committee on Interior and Insular Affairs report on H.R. 3809, which contained a provision for PETT similar to the provision enacted as section 116(c)(3), states as follows:

> Paragraph (3) requires the Secretary to grant to states where sites are being characterized or otherwise developed payment in lieu of taxes which would be paid *if the project or facility* were taxed like other industrial activities of the state. H. Rep. No. 97-491, Part 1, 97th Cong., 2d Sess., 56 (1982). (Emphasis supplied.)

The highlighted language speaks to the "project" and the industrial activities associated with it, and does not further imply any geographic specificity, such as the interpretation proposed by DOE in the March 7, 1990, Notice.

In a similar vein, the report of the House Committee on Energy and Commerce, reporting on H.R. 6598, states, in connection with a provision identical to 116(c)(3), that payments equal to taxes would be made based on "site characterization activities and the development and operation of a repository, as such state and unit of local government taxes other real property and industrial activity." H. Rep. No. 97-785, Part 1, 97th Cong., 2d Sess. 73 (1982). Again, the Report does not purport to limit the taxable activities to the site itself.

Further evidence of Congress' intent that PETT was to be coextensive with the jurisdictions' taxing authority over industrial activities which would be subject to such authority, but for the federal government's immunity, is found in a statement by Senator J. Bennett Johnston (ranking minority member of the Senate Energy and Natural Resources Committee and one of the sponsors of the legislation), at the time the NWPA was originally being considered for passage. Senator Johnston stated, in relevant part, "that a

State should not be worse off by virtue of having one of these facilities in their State than they would be in terms of taxes, at least." *See* 128 Cong. Rec. S4132 (April 28, 1982).

These excerpts from the legislative history demonstrate that Congress intended to provide a level of compensation for the affected jurisdictions that would be coextensive with the amounts the taxing jurisdictions otherwise could collect as taxes if site characterization activities were carried on by private parties. Therefore, we believe that Congress did not intend to limit payments only to those activities physically on site, but to include all activities conducted in support of site characterization, as long as the jurisdiction has taxing authority over the activities.

C. Computation of Payments

Six commenters stated that PETT funds should be disbursed under a process in which (1) the eligible jurisdiction would prepare a grant request, (2) DOE would review the request and make a grant based on that request, and (3) resolution of disputes, if necessary, would be carried out in the same manner as for a private entity.

DOE's original interpretation of the PETT funding process was based on an analysis of the language of the NWPA. The payments approach outlined in this final Notice responds to the desire of eligible jurisdictions to participate actively in determining PETT, and yet still avoids the complexity of the grant administration process. The payment method also appears to offer the least complicated mechanism for transferring funds, and is consistent with the language of the NWPA. Potential recipients are requested to provide to DOE their estimate of DOE's PETT liability, and their bases for computing that amount. DOE will compute its PETT based on the information provided, as well as applicable DOE accounting directives and standards. DOE will document its analysis of this information and calculation of the PETT. Ultimate authority for determining PETT rests with DOE.

While this payment method combines the advantages of both payment and grant processes, the comments underscored that a potential exists for differences between the PETT estimates developed by the eligible jurisdictions and the amount of the PETT calculated by DOE. Therefore, DOE has provided for an appeal process through DOE's Office of Hearings and Appeals (OHA) for those jurisdictions having disputes with DOE regarding PETT. As discussed below in Section IV.D, OHA is a quasi-judicial body that reports to the Secretary of Energy. DOE chose OHA to conduct the appeals process because of its expertise in developing administrative records regarding economic issues. This Notice provides that even though an appeal might be pending, DOE may nevertheless make a preliminary payment. By accepting a payment from DOE, a jurisdiction will not waive its right to appeal the amount of the payment. The appeal process in section IV.D of this Notice is an integral part of the PETT process, and OHA's decisions will serve as the final DOE action with respect to PETT.

D. Additional Meetings

Four commenters either requested or indicated a willingness to participate in meetings to further discuss their views on the Proposed Notice. Another commenter encouraged DOE to sponsor a meeting with interested jurisdictions in New Mexico and potentially affected parties in Nevada. Clark County, Nevada, requested a meeting with DOE on PETT issues and invited representatives of the State of Washington and affected units of local governments in Nevada. A meeting, sponsored by Clark County, was held on August 1, 1990, for the purpose of clarifying their comments on the Proposed Notice. DOE will attempt to meet with eligible jurisdictions at any time they desire. After publication of this Notice, DOE plans to initiate meetings with eligible jurisdictions to discuss PETT.

E. PETT Commencement and Termination

Some commenters expressed concern about the commencement date specified in section III.C of the Proposed Notice. Clark County stated that the Proposed Notice improperly disqualifies site characterization activities that were underway before May 28, 1986. The Mid-Columbia Consortium of Governments (MCC) claimed that site characterization activities were underway at the Hanford site before it was recommended for site characterization. The commenters further argued that since no specific commencement date was mentioned in the NWPA, under the holding of *Chevron, USA, Inc.* v. *Natural Res. Def. Council*, 467 US 837 (1984), a Federal agency charged with the responsibility to administer the law has the authority to fill any gaps in that law. The commenters added that DOE's interpretation must be a reasonable one, and concluded that establishing May 28, 1986, as the commencement date for PETT eligibility is unreasonable.

DOE disagrees with the commenters' contention that the date for commencement of PETT eligibility, as stated in section III.C of the Proposed Notice, is unreasonable, and that it improperly disqualifies activities that may have occurred prior to May 28, 1986. DOE interprets May 28, 1986, as the starting date of site characterization for the purposes of calculating PETT because that was the date on which the President approved sites in Nevada, Texas, and Washington as candidate sites for site characterization. Simultaneously, the President rejected the other first repository States as candidate sites for site characterization, and their eligibility for PETT never matured. (However, because some activities related to site characterization carried out in Nevada and Washington prior to May 28, 1986, may have resulted in improvement to real estate for purposes of assessment valuation, PETT may be available for the resulting increase in real estate value.)

The State of Washington and the MCC noted that the NWPA does not specify a date for PETT to begin, and suggested that PETT eligibility started from the beginning of site characterization activities, or the date on which Congress enacted the NWPA for ongoing site characterization activities. The commenter added that the definition of "site characterization" in section 2(21) of the NWPA necessarily implies that some site characterization activities (e.g., activities undertaken to establish the parameters of the site) must occur before the "site" was designated as a site and thus should be eligible for PETT. The commenter concluded that Congress foresaw and approved ongoing site characterization as of the date of enactment of the NWPA.

DOE disagrees with the comment that section 2(21) of the NWPA implies some site characterization activities must occur prior to the site being designated as a candidate site. Section 2(21) of the NWPA defines site characterization as (a) siting research activities with respect to a test and evaluation facility at a candidate site, and (b) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, etc. Although various laboratory and field activities may have been underway at the sites prior to the May 28, 1986, date, these activities were neither related to a test and evaluation facility nor were they undertaken to establish the geologic condition or the ranges of the

parameters relevant to the location of a repository. Even if some of the data collected before the May 28, 1986, date were relevant to the overall characterization of the site, that fact alone would not qualify the data collection process as "site characterization" for purposes of the NWPA.

One commenter stated that the grants for Nye County, Nevada, and Washington State should include interest since May 28, 1986, when the sites were formally designated for characterization. DOE reiterates its intention, as stated in the Proposed Notice, that "[l]ate payments, for initial and subsequent payments shall include interest in accordance with the applicable requirements of the taxing jurisdiction."

F. Impact on Other Programs

Two commenters from the State of New Mexico noted that land withdrawal legislation for the WIPP site then pending before Congress provided for payments equivalent to taxes on the WIPP site, and they expressed concern about the potential impact of the Proposed Notice on the land withdrawal legislation. The Carlsbad Department of Development observed that provisions of the NWPA have been increasingly applied to WIPP legislative land withdrawal proposals. The proposed interpretation of limiting PETT to activities "at such site" has the potential effect of eliminating (from the proposed WIPP payments-equivalent-to-taxes) all activities outside the WIPP site, such as offices in Carlsbad and the TRUPAK manufacturing facility. The WIPP Task Force expressed concern that DOE's action may establish an "onerous" precedent with respect to the interpretation and implementation of proposed WIPP payments-equivalent-to-taxes provisions for the WIPP site in New Mexico.

Without a WIPP legislative land withdrawal, it is impossible even to speculate on whether DOE would be construing similar or dissimilar statutory requirements.

IV. PETT Interpretation and Procedures

A. PETT Eligibility

The existence of site characterization activities occurring within a particular jurisdiction does not in itself create an entitlement to PETT. A right to PETT arises when DOE conducts activities at the site for which the States, affected Indian Tribes and affected units of local government would otherwise be authorized to impose taxes. An affected unit of local government is defined in section 2(31) of the NWPA. Moreover, the NWPA authorizes DOE to make payment only in an amount that is equal to that which private entities would be required to pay in taxes. Taxes refer to any existing authorities to levy taxes on real property and industrial or commercial activities. Thus, PETT is (1) contingent upon the taxing jurisdiction having the requisite taxing authority; and (2) limited in amount by the equivalency provision.

Accordingly, the general requirements for a jurisdiction to be eligible to receive PETT for site characterization activities are interpreted by DOE as follows:

1. (a) For the period May 28, 1986, to December 22, 1987, jurisdictions in, and the States of Nevada, Texas, and Washington may be eligible for PETT; (however, there were no Federal site characterization activities conducted in Texas);

(b) After December 22, 1987, the State of Nevada, any affected unit of local government, and affected Indian Tribes may be eligible for PETT;

2. The jurisdiction must have the requisite taxing authority; and

3. The jurisdiction must levy taxes applicable to non-Federal activities that are similar to the site characterization activities conducted by the Federal Government.

The NWPA provides for eligible jurisdictions (defined in section IV.A above) to receive payments equal to the amount they "would receive if authorized to tax site characterization activities at such site * * *." The NWPA defines site characterization as:

1. Siting research activities with respect to a test and evaluation facility at a candidate site.

2. Activities, whether the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

By this definition, activities undertaken by DOE to evaluate the geologic suitability of the site that an eligible jurisdiction is authorized to tax if it were undertaken by a taxpaying entity may be considered in the calculation of PETT. These activities may include, but are not limited to, the following:

1. Activities that impact the assessed value of real property.

2. Activities carried out prior to May 28, 1986, but only to the extent that the residual value of these activities after May 28, 1986, are treated as improvements to real property, used in support of site characterization for purposes of assessment valuation.

3. Ownership or possessory use of personal property.

4. Purchase or transfer of personal property acquired in one State for use in an eligible State.

5. Use of motor vehicles.

6. Use of special fuels.

7. Payment of salaries to Federal employees.

8. Activities subject to business or income taxes.

Government contractor activities are not eligible for PETT, and are not within the scope of this Notice.

B. Computation of Payments

Under the Supremacy Clause of the Constitution of the United States, States, local jurisdictions and Indian Tribes cannot tax Federal property or activities unless a waiver of sovereign immunity has been granted. The NWPA does not provide such a waiver, but, rather requires DOE to grant to eligible jurisdictions payments equal to the amounts they would receive if DOE's activities were not tax-exempt.

DOE anticipates that taxes normally levied against real property and industrial or commercial activities by eligible jurisdictions for general purposes and under a general taxing authority will be relevant for consideration in determining PETT liability. Federal site characterization activities that might qualify for PETT are outlined in section IV.A above.

DOE will be guided by the following considerations in its evaluation of PETT liability to a jurisdiction:

1. DOE's Accounting Directives (2200.xx Series), as supplemented by generally accepted accounting principles, will guide the recordkeeping for PETT. Copies of these documents will be available for examination in Washington, DC, by contacting the Office of Financial Policy, CR-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4860; at the Nevada Operations Office, by contacting the Director, Financial Management Division, Nevada Operations Office, 2753 S. Highland, Las Vegas, NV 89109, (702) 295-1061; and at the Richland Operations Office, by contacting the Director, Financial Resources Division, Richland

Operations Office, 825 Jadwin Avenue, Richland, WA 99352, (509) 376–8669.

2. To be eligible for PETT, a jurisdiction's tax must be constitutionally valid.

3. Since the tax structures and practices of eligible jurisdictions will be applied in the computation of PETT, it is necessary to identify for each relevant tax:

a. Types of property and value measurements used to determine the taxable basis.

b. Rates and/or classes of rates applicable to the taxable basis.

c. Exemptions and limits.

d. Scope of applicability.

e. Specific agent(s) of the taxing authority to whom payments and inquiries should be addressed.

f. Types of activities.

C. Administrative Procedures

For the period beginning May 28, 1986 through calendar year 1990, eligible jurisdictions should submit an estimated PETT to DOE within 120 days after publication of this Notice. For years subsequent to calendar year 1990, eligible jurisdictions should submit an estimated PETT to DOE within 120 days after the end of their fiscal year. The estimated PETT analysis should include the following:

1. Basis for eligibility showing how the jurisdiction meets the requirement for eligibility as set forth in this Notice.

2. Citations of relevant tax rules, regulations, rates, and bases for applying the rates.

3. Lists of Federal site characterization activities considered in estimating the PETT.

4. Calculations supporting the estimates in sufficient detail to allow DOE to verify the estimates.

5. Estimate of PETT liability for each tax type to which DOE's site characterization activities are subject and estimates of PETT liability for each tax type in accordance with the appropriate tax laws.

DOE will review these analyses to verify that they are complete and correct regarding:

1. DOE's site characterization activities.

2. The assessed value of DOE's property used to support its site characterization activities.

3. DOE's operational activities subject to tax.

4. The tax laws of the eligible jurisdiction.

In evaluating the analyses, DOE may confer with representatives of eligible jurisdictions to obtain clarification and additional information, as necessary. Additionally, DOE may request input from independent experts concerning valuation of property, tax calculations, record-keeping, and other technical issues arising from the PETT procedures.

The PETT disbursement mechanism will be tailored, to the maximum extent possible, to accommodate the payment procedures and schedules of the eligible jurisdictions. Late payments shall include interest, if appropriate, in accordance with applicable requirements of the taxing jurisdictions.

Should an eligible jurisdiction choose not to submit the information requested above within 120 days after publication of this Notice, then DOE will perform the calculations to determine the PETT to that jurisdiction without the submittal. Once DOE has completed its analysis, it will make payment to the eligible jurisdiction. Documentation that presents DOE's analysis will accompany PETT. For subsequent years, should eligible jurisdictions choose not to submit their analysis, PETT estimate, and supporting documentation to DOE within 120 days of the end of the eligible jurisdiction's fiscal year, then DOE will perform the calculations necessary to determine the PETT to that jurisdiction without the submittal. Information submitted after the 120-day period will be considered to the extent practicable.

A record of the discussions between DOE and eligible jurisdictions will be maintained sufficient to establish the positions of all parties. These discussions will address:

1. Reporting procedures for DOE and eligible jurisdictions.

2. Specific PETT application procedures.

3. Channels and methods of communication.

4. Individuals and offices responsible for PETT within eligible jurisdictions.

5. Processes for estimating PETT.

6. Disbursement mechanisms.

D. Appeals Process

An appeals process is available for those jurisdictions which are challenging the original DOE determination related to PETT. Appeals may be filed with the Office of Hearings and Appeals (OHA), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. The appeal must be filed within 45 days from the date of issuance of an original DOE determination related to PETT. Appeals will be governed by procedures set forth in 10 CFR part 205 subpart H.

The OHA is a quasi-judicial body that reports to the Secretary of Energy and, except as otherwise provided by law, is responsible for conducting the adjudicative proceedings of DOE other than those which are subject to the jurisdiction of the Federal Energy Regulatory Commission or the Board of Contract Appeals. In connection with these duties, OHA holds hearings, receives evidence, develops the record, and issues the final determination of DOE, which is subject to review in the Federal courts.

E. PETT Commencement and Termination

May 28, 1986, the date the President approved sites in Nevada, Texas, and Washington as candidate sites for site characterization, is the date of commencement for PETT eligibility. Some activities related to site characterization carried out before May 28, 1986, may be included, but only to the extent that the residual value of those activities is treated as an improvement to real estate for purposes of assessment valuation. December 22, 1987, the date on which the NWPA was amended to terminate site characterization activities at the Texas and Washington sites, is the date of termination for their PETT eligibility. None of the possible bases for PETT, for activities subsequent to site characterization, i.e., the development and operation of a repository, specified in the NWPA are applicable to the Texas and Washington sites. No such development and operation activities were undertaken at the Texas and Washington sites. The State of Nevada continues to be eligible to receive PETT.

F. Federalism Impacts

Executive Order (E.O.) 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, and on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a rule or a policy of action. DOE has concluded that there are not sufficient substantial direct effects to require preparation of a federalism assessment.

G. Review Under Executive Order 12291

DOE reviewed this Notice under Executive Order 12291, and concluded that it did not involve a "major rule." DOE submitted the Notice to the Office of Management and Budget (OMB) under that Executive Order. OMB has completed its review.

Issued in Washington, DC August 20, 1991.

John W. Bartlett,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 91-20470 Filed 8-26-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-2778-000, et al.]

Valero Transmission, L.P., et al.; Natural Gas Certificate Filings

August 19, 1991.

Take notice that the following filings have been made with the Commission:

1. Valero Transmission, L.P.

[Docket No. CP91-2778-000]

Take notice that on August 14, 1991, Valero Transmission, L.P. (Valero), P.O. Box 500, San Antonio, Texas 78215, filed an application in Docket No. CP91-2778-000 pursuant to section 3 of the Natural Gas Act and §§ 153.3 and 153.10 through 153.12 of the Commission's Regulations and Executive Order 10485, as amended by Executive Order 12038, and Secretary of Energy Delegation Order No. 0204-112. In this application, Valero requests an order authorizing the siting, construction, operation and maintenance of pipeline facilities at the international boundary near McAllen, Texas and Reynosa, Tamaulipas, Mexico. In addition, Valero requests a Presidential Permit covering the proposed construction, connection and operation of pipeline facilities at the United States-Mexico border, all as more fully set forth in the application on file with the Commission and open to public inspection.

Valero states that it proposes to construct approximately 3.5 miles of pipeline to connect the southern portion of its pipeline system to the existing, but previously underutilized, 42-inch pipeline of Petroleos Mexicanos (PEMEX) which terminates on the Mexico side of the Rio Grande outside the city of Reynosa, Tamaulipas, Mexico. Valero states that it is proposing to construct this border crossing to provide an additional point of delivery for any party on its system for the exportation of natural gas from the United States to Mexico for use in Mexico.

The proposed Valero facilities would consist of 17,291 feet of 24-inch pipeline running from Valero's existing pipeline system near Penitas, Texas to the United States-Mexico border at McAllen, Texas and approximately 1,000 feet of 24-inch pipeline running under the Rio Grande River to a point of connection with the existing border facilities of PEMEX. The facilities are designed to initially move up to approximately 400,000 Mcf of natural gas per day to accommodate the estimates of PEMEX of the quantity of gas which may be demanded at this point.

Valero states that the meter station and pipeline facilities are located away from population concentrations and will provide safe transportation of natural gas into Mexico. Valero further states that the proposed facilities will have no significant environmental impact.

The PEMEX existing facilities consist of a large capacity metering and regulating station which are located on a site immediately adjacent to the Rio Grande River and which are interconnected by 1.4 miles of 42-inch pipeline to the PEMEX mainline. The PEMEX mainline facilities continue on to the City of Reynosa and the City of Monterrey.

Valero states that export of natural gas through the proposed facilities will in no way impair the ability of it or other exporters to render service to domestic customers at reasonable rates. Valero states that one exporter using the facilities is expected to be Valero Industrial Gas, L.P. (Vigas) which has applications pending before the Department of Energy to continue its present exports to Mexico. Valero states that both it and PEMEX intend the proposed export point to be open to any party for the export and sale of natural gas to Mexico. Valero states that several blanket authorizations to export gas to Mexico have recently been granted based on the finding by the Department of Energy that sales to Mexico will be sales of surplus natural gas.

Valero states that the construction of the proposed facilities for the exportation of natural gas to markets in Mexico is consistent with the public interest because the transportation of natural gas by an additional pipeline for the export and sale into Mexico will further open market competition and will assist in the appropriate economic allocation of resources. In addition, Valero states that it is in the public interest to provide a connection with PEMEX facilities which PEMEX is desirous of using because they provide for safe high-pressure mainline transportation outside the City of Reynosa and away from areas of high population density. Valero states also that its facilities will be open to any party for export and sale into Mexico. Valero requests that the Commission give this application expeditious consideration.

Comment date: September 9, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company, Tennessee Gas Pipeline Company, Midwestern Gas Transmission Company

[Docket Nos. CP91-2795-000, CP91-2796-000, CP91-2797-000]

Take notice that on August 15, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached Appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: October 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket start up date
CP91-2795-000 (8-15-91)	Transco Energy Marketing Company (Marketer).	15,000 15,000 5,475,000	Off LA	LA	6-10-91, ITS, Interruptible.	ST91-9491-000, 6-14-91.
CP91-2796-000 (8-15-91)	Tenaska Marketing Ventures (Marketer).	250,000 250,000 91,250,000	Off LA, Off TX, MS, TX, LA, AL.	IL, IN	6-25-91, as amended, IT, Interruptible.	ST91-9932-000, 8-1-91.
CP91-2797-000 (8-15-91)	Tenaska Marketing Ventures (Marketer).	250,000 250,000 91,250,000	TN, IN, IL, KY	IL, IN	6-25-91, IT, Interruptible.	ST91-9931-000, 8-1-91.

Applicant's address	Blanket docket
ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243	CP88-532-000
Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252	CP90-174-000
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252	CP87-115-000

3. Algonquin Gas Transmission Company

[Docket No. CP91-2727-000, CP91-2728-000, CP91-2729-000]

Take notice that Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP89-948-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket no. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2727-000 (8-9-91)	Phibro Energy, Inc. (Marketer).	700,000 700,000 255,500,000	MA, CT, NY, NJ	MA	8-18-89, AIT-1, Interruptible.	ST91-8994, 5-12-91, ST91-8827, 5-1-91.
CP91-2728-000 (8-9-91)	Chevron, U.S.A., Inc. (Marketer).	600,000 600,000 219,000,000	MA, NY, NJ	MA	3-11-91, AIT-1, Interruptible.	ST91-8533, 4-2-91.
CP91-2729-000 (8-9-91)	O & R Energy, Inc. (Marketer).	100,000 100,000 36,500,000	NY, NJ	MA, NY	2-21-91, AIT-1, Interruptible.	ST91-8532, 4-1-91, ST91-8535, 4-2-91.

4. ANR Pipeline Company

[Docket No. CP91-2738-000]

Take notice that on August 9, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-2738-000, an application to construct and operate certain natural gas metering facilities pursuant to section 7(c) of the Natural Gas Act. ANR's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it requests authorization to undertake a "mutually exclusive alternative" to the West to East Crossover Project proposed by Tennessee Gas Pipeline Company (Tennessee) in Docket No. CP91-1627-000. Specifically, ANR seeks authorization to interconnect with Tennessee by building two meter station/interconnections, one at the terminus of a proposed 46.9 mile, 30-inch pipeline, to be constructed from Tennessee's Line 100, located in Winn Parish, Louisiana, to a point of interconnection with ANR's southeast mainline, located in Caldwell Parish, Louisiana. The second meter station will be constructed at a proposed point of interconnection with Tennessee, at or near ANR's Patterson Compressor Station located in St. Mary Parish, Louisiana and Tennessee's Muskrat Line. The estimated cost of the proposed facilities is $3,186,600; to be financed with internally generated funds.

Through these interconnections, ANR states that it will receive, transport, and redeliver Tennessee's Texas and Western Louisiana gas supply and Bear Creek Storage withdrawals through ANR's existing facilities to Tennessee's Muskrat Line for redelivery to Tennessee's eastern supply line. ANR proposes to provide long-term, firm transportation service for Tennessee, as

described above, largely by displacement under ANR's blanket certificate and the terms, conditions, and rates of ANR's FERC Tariff—Volume 1–A. ANR states that it is willing to negotiate a rate with Tennessee for service that will fully cover ANR's incremental costs and provide a significant savings to Tennessee.

It is stated that by this proposal, ANR will accomplish the goal sought by Tennessee through its application in Docket No. CP91–1627–000, without the expense and environmental disruption of building the majority of the 223 miles of 30-inch pipeline proposed by Tennessee, and the addition of 15,055 h.p. of new compressor at two sites. ANR states that the risk of underutilization can be better controlled and that maximum cost benefit may be achieved by using ANR's proposed alternative, rather than the West to East Crossover Project proposed by Tennessee.

Comment date: September 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gulf Transmission Company

[Docket No. CP91–2792–000, CP91–2793–000]

Take notice that on August 14, 1991, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–239–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Columbia Gulf and is summarized in the attached appendix.

Comment date: October 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2792-000 (8-14-91)	Arco Oil & Gas Company.	65,000 52,000 18,980,000	Off LA, LA	Off LA, LA	ITS-1, 10-19-87, as amended ITS-2, 10-19-87, as amended, Interruptible.	ST91-9693-000, 7-1-91.
CP91-2793-000 (8-14-91)	Bishop Pipeline Corporation.	275,000 220,000 80,300,000	Off LA, LA	LA, MS, TN	ITS-1, 8-18-89, as amended ITS-2, 4-1-87, as amended, Interruptible.	ST91-9701-000, 7-1-91.

6. Kern River Gas Transmission Company

[Docket No. CP89–2048–006]

Take notice that on August 9, 1991, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas, 77252–2511, pursuant to section 7(c) of the Natural Gas Act, as amended, and the optional procedures of subpart E of part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), filed in Docket No. CP89–2048–006 a petition to amend the certificate of public convenience and necessity that was issued in this docket on January 24, 1990. Kern River seeks by its amendment to adjust the initial rates for service on its previously authorized interstate pipeline system to reflect the actual costs of constructing its system, all as more fully set forth in the request on file with the Commission and open to public inspection.

Kern River states that the initial rates established by the Commission's January 24, 1990 order are based on a capital cost estimate prepared in 1989 reflecting 1989 cost levels while the proposed adjusted initial rates are based on updated costs that reflect the actual costs of constructing its system. Kern River also proposes to include in the adjusted initial rates the costs of certain additional facilities that it will construct to connect its system with major gas processing plants in southwestern Wyoming.

For firm transportation service under Rate Schedule KRF–1, Kern River seeks to establish an initial daily reservation rate of $0.4669 and a transportation rate of $0.1852. For interruptible transportation service under Rate Schedule KRI–1, Kern River proposes an initial transportation rate of $0.6520. Kern River states that no other changes to its pipeline system or services are sought.

Comment date: September 9, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Southeastern Natural Gas Company

[Docket No. CP91–2688–000]

Take notice that on August 7, 1991, Southeastern Natural Gas Company (Southeastern, an Ohio Hinshaw pipeline company), P.O. Box 377, Frazeysburg, Ohio 43822–0, filed in Docket No. CP91–2688–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation sale, and assignment of natural gas in the same manner that intrastate pipeline are authorized to engage in such activities under subpart C, D, and E of part 284 of the regulations, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southeastern states that under the blanket certificate, it intends to receive gas from Tennessee Gas Pipeline Company and transport gas to Texas Eastern Transmission Corporation,

through a proposed new interconnection.

Southeastern states that it will file a petition for rate approval pursuant to 18 CFR 284.123(b)(2) at some time in the future. Southeastern further states that it is holding an open season beginning with the date of this notice and ending 10 calendar days thereafter. Any persons interested in participating in the open season may contact Southeastern by telecopy at (215) 293–1440, attention: Francis X. Shields.

Comment date: September 9, 1991, in accordance with Standard Paragraph F at the end of the notice.

8. ANR Storage Company

[Docket No. CP91–2730–000]

Take notice that on August 9, 1991, ANR Storage Company (ANR Storage) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91–2730–000 pursuant to section 7(b) of the Natural Gas Act (NGA), an application for permission and approval to abandon by sale to ANR Pipeline Company (ANR) property interests in certain jurisdictional facilities which Applicant currently wholly owns, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR Storage requests authority to abandon and convey to ANR property interests in certain of ANR Storage's existing facilities located in Kalkaska County, Michigan. ANR Storage states that this conveyance of facilities is necessary to permit ANR to transport natural gas into an out of the Blue Lake Storage Field, which storage field is the subject of an application for a certificate of public convenience and necessity contemporaneously filed by Blue Lake Gas Storage Company.

It is stated that ANR has contracted for the entire capacity of the Blue Lake Storage Field. During the Summer Period, in order to inject volumes of natural gas into the field, ANR would deliver gas for transportation either to Michigan Consolidated Gas Company (MichCon) or to Great Lakes Gas Transmission Limited Partnership (Great Lakes) at existing points of interconnection. Natural gas delivered to MichCon would be transported and redelivered to ANR at a proposed interconnection of ANR and MichCon in Kalkaska County, Michigan (Kalkaska Interconnection). It is explained that ANR would construct 8.5 miles of pipeline from the Kalkaska Interconnection to a proposed interconnection with ANR Storage in Kalkaska County, Michigan. From this point, ARN's volumes would be transported using facilities which ANR proposes to purchase from ANR Storage, to a proposed interconnection with the Blue Lake Storage Field in Blue Lake Township, Kalkaska County, Michigan (Blue Lake Interconnection).

ANR Storage explains that gas delivered to Great Lakes during the summer would be transported and redelivered to ANR at the existing Deward Interconnection located in Crawford County, Michigan, for subsequent transportation through facilities ANR has purchased from ANR Storage to the Blue Lake Interconnection.

ANR Storage explains that during the winter, this process would be reversed, with Blue Lake redelivering volumes to ANR at the Blue Lake Interconnection and ANR redelivering equivalent volumes through facilities it has acquired from ANR Storage to either Great Lakes at the Deward Interconnection or to MichCon at the proposed Kalkaska Interconnection, for transportation and ultimate redelivery to ANR or its customers.

It is stated that the interest conveyed to ANR would give ANR ownership of facilities and related capacity currently owned by ANR Storage sufficient for ANR to receive and deliver 600,000 Mcf of natural gas per day at the Blue Lake Interconnection.

ANR Storage states that upon approval of this application to abandon and the related application of ANR to acquire facilities, and commencement of service by Blue Lake, ANR would be obligated to pay ANR Storage the net book value of the facilities to be acquired on the date of the conveyance.

It is explained that ANR and ANR Storage have entered into an Operating Agreement whereby ANR Storage is designated as the operator of the facilities acquired by ANR. ANR Storage would charge a fee for its services which is based on its cost experience in operating the facilities to be acquired by ANR.

Comment date: September 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

9. ANR Pipeline Company

[Docket No. CP91–2705–000]

Take notice that on August 9, 1991, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91–2705–000, pursuant to section 7(c) of the Natural Gas Act (NGA), and application for a certificate of public convenience and necessity authorizing ANR to acquire and construct certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authority to acquire a property interest in certain jurisdictional facilities currently owned by ANR Storage Company (ANR Storage), to construct approximately 8.5 miles of 36-inch pipeline from the terminus of the facilities to be acquired from ANR Storage to a proposed interconnection with Michigan Consolidated Gas Company, in Kalkaska County, Michigan; and to construct the necessary appurtenant facilities to permit ANR to transport natural gas for injection and withdrawal from Blue Lake Storage Field. ANR states that it has entered into a storage service form the Blue Lake Storage Field. The Blue Lake Gas Storage Company has on file with the Commission an application to develop and operate the Blue Lake Storage Field to provide service to ANR.

ANR states that the total cost of the facilities to be acquired or constructed is $17.7 million. ANR further states that such costs will be financed from funds on hand.

Comment date: September 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

10. Trunkline Gas Company

[Docket No. CP91–2784–000, CP91–2785–000, CP91–2786–000]

Take notice that on August 14, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–586–00, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[4]

Trunkline has provided information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation date; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, as summarized in the appendix.

Comment date: October 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidates.

Docket No. (date)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up
CP91-2784-000	V.H.C. Gas Systems, L.P. (Marketer).	200,000 200,000 73,000,000	IL, LA, OLA, TN, TX, OTX.	LA	8-30-89, PT, Interruptible.	ST91-9684, 6-26-91.
CP91-2785-000	Natgas U.S., Inc. (Marketer).	20,000 20,000 7,300,000	IL, LA, OLA, TN, TX, OTX.	IL	2-16-88, PT, Interruptible.	ST91-9647, 6-27-91.
CP91-2786-000	Vesta Energy Company (Marketer).	100,000 50,000 36,500,000	IL, LA, OLA, TN, TX, OTX.	IL	11-8-89, PT, Interruptible.	ST91-9652, 6-27-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

11. Northern Natural Gas Company

[Docket No. CP91-2300-001]

Take notice that on August 12, 1991, Northern Natural Gas Company (Northern), 1400 Smith Street, P. O. Box 1188, Houston Texas 77251-1188, filed in Docket No. CP91-2300-001 an amendment to the application filed June 18, 1991, in Docket No. CP91-2300-000, pursuant to section 7(b) of the Natural Gas Act, to delete its request to abandon certificates to three parties, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Northern contends that in the June 18, 1991, application, it requested authority to abandon twenty-two individually certificated infield exchange agreements with fourteen companies and authority for thirteen of the companies to abandon certificated authorizations issued to each of them. Northern alleges that three of the parties it requested to abandon service to, Natural Gas Pipeline of America, Transcontinental Gas Pipe Line Corporation, and Cabot Corporation/Maple Gas Corporation, protested the abandonment as it related to agreements between Northern and the three companies.

Northern is amending the June 18, 1991, application by deleting its request to abandon the certificates issued for Northern's Rate Schedules X-38 and X-56 with Natural, for Rate Schedules X-71 and X-87 with Transco, and Rate Schedule X-63 with Cable/Maple. Northern contends that no party opposes the abandonment of the remaining exchange agreements as described in the revised Exhibit Z-1, Schedule of Services to be abandoned.

Comment date: September 9, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. Trunkline Gas Company

[Docket Nos. CP91-2787-000, CP91-2788-000, CP91-2789-000]

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt[1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2787-000 (8-14-91)	Trunkline Gas Company, (Marketer).	100,000 100,000 36,500	IL, OLA, TX	IL	9-20-89, PT, Interruptible.	ST91-9655, 6-27-91.
CP91-2788-000 (8-14-91)	Trunkline Gas Company, (Marketer).	120,000 120,000 43,800,000	IL, LA, TX, TN, OLA, OTX.	LA	12-14-88, PT, Interruptible.	ST-91-9660, 6-27-91.
CP91-2789-000 (8-14-91)	Trunkline Gas Company, (Marketer).	25,000 25,000 9,125,000	IL, LA, TX, TN, OLA, OTX.	IL	1-22-88, PT, Interruptible.	ST91-9657, 6-27-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

13. North Penn Gas Company

[Docket No. CP91-2649-000]

Take notice that on August 8, 1991,[6] North Penn Gas Company (North Penn), 55 South Third Street, Oxford, Pennsylvania 19363, filed in Docket No. CP91-2649-000 an application pursuant to sections 1(c), 7(b), and 7(c) of the Natural Gas Act (NGA) for: (1) Permission and approval to abandon all sales, storage and transportation services and facilities subject to the jurisdiction of the Commission; (2) a declaration that the facilities, operations and services of North Penn would then become exempt from the provisions of the NGA under its section 1(c); and (3) a blanket certificate of public convenience and necessity pursuant to § 284.224 of the Commission's Regulations; all as more fully set forth in the application

[6] The notice of application was tendered for filing on August 2, 1991; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207 was not paid until August 8, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

which is on file with the Commission and open to public inspection.

North Penn indicates that it is both an interstate pipeline and a Pennsylvania local distribution company (LDC) and thus is regulated by the Commission and by the Pennsylvania Public Utility Commission. It is stated that all of North Penn's facilities are located within the state of Pennsylvania. North Penn explains that it provides sales, storage and transportation services at retail in Pennsylvania and it also provides wholesale services. North Penn states that by its proposals it is seeking greater uniformity in rates and services it provides for its customers.

North Penn specifically proposes to abandon: (1) Storage service to Transcontinental Gas Pipe Line Corporation, CNG Transmission Corporation, and Corning Natural Gas Corporation (Corning); (2) all FERC transportation service authority, obligations and facilities;[7] and (3) sales service to New York State Electric and Gas Corporation (NYSEG), Kane Gas Light and Heating Company, and Corning. North Penn states that it would provide these services, if desired, under its proposed § 284.224 blanket certificate.

North Penn files concurrently its petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 to allow implementation of its rate proposal for services under its proposed § 284.224 blanket certificate.

North Penn states that the sales service provided to NYSEG is firm sales service for resale to predominantly high priority residential customers and that North Penn desires to continue this service under the proposed blanket certificate. It is stated that towards that end, North Penn requests that pursuant to § 284.145(e), the Commission impose terms and conditions other than those set forth in §§ 284.145 (a) and (b). North Penn specifically requests that sales service provided to NYSEG not be subject to the two-year limitation specified in § 284.145(e). North Penn requests that the Commission grant a waiver of those subsections and require North Penn to provide full requirements sales to NYSEG unless and until North Penn receives abandonment authorization to terminate such service. It is stated this waiver request would apply only to future service for NYSEG so as to insure that North Penn's sales to serve high priority customers would not be adversely affected by the granting of the proposed blanket certificate.

[7] North Penn indicates that it is providing transportation in its capacity as an LDC to present and former LDC sales customers. North Penn states that it currently provides no other transportation services.

North Penn states that it has historically acquired gas to serve the combined needs of its retail market as well as its jurisdictional sales and that no gas acquisition has been earmarked for resale to NYSEG. North Penn states that accordingly, the prohibition in § 284.145(c) against acquisition of gas "solely or primarily" to provide sales (i.e., to NYSEG) under the proposed blanket certificate is inapplicable. North Penn states that if the Commission determines that such prohibition is applicable, North Penn seeks a waiver of this prohibition in order to continue firm sales service to NYSEG. North Penn indicates that it meets the volumetric test set forth in § 284.224(e)(3).

Comment date: September 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

14. Blue Lake Gas Storage Co.

[Docket No. CP91-2704-000]

Take notice that on August 9, 1991, Blue Lake Gas Storage Company (Blue Lake) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-2704-000, pursuant to § 7(c) of the Natural Gas Act (NGA), an application for a certificate of public convenience and necessity authorizing Blue Lake to develop, construct, and operate an underground gas storage field and related facilities and to render firm gas storage service to ANR Pipeline Company (ANR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Blue Lake requests authority to provide natural gas storage service to ANR, as follows:

Maximum Storage Volume-42 Bcf
Maximum Daily Withdrawal Quantity-600,000 Mcf/d
Maximum Daily Injection Quantity-210,000 Mcf/d

Blue Lake explains that during the Summer Period (April 1-October 31), ANR would deliver gas for transportation either to Michigan Consolidated Gas Company (MichCon) or to Great Lakes Gas Transmission Limited Partnership (Great Lakes) at existing points of interconnection. Gas delivered to MichCon would be transported and redelivered to ANR at a proposed interconnection of ANR and MichCon in Kalkaska County, Michigan (Kalkaska Interconnection). Blue Lake states that ANR would construct 8.5 miles of pipeline facilities from the Kalkaska Interconnection to a proposed interconnection with ANR Storage Company (ANR Storage) in Kalkaska County, Michigan. From this point, ANR volumes would be transported using facilities which ANR has purchased from ANR Storage, to a proposed interconnection with Blue Lake in Blue Lake Township, Kalkaska County, Michigan (Blue Lake Interconnection) for ultimate delivery to storage by Blue Lake.

Blue Lake explains that gas delivered to Great Lakes during the Summer Period would be transported and redelivered to ANR at the existing Deward Interconnection located in Crawford County, Michigan, for subsequent transportation through facilities ANR has purchased from ANR Storage to the Blue Lake Interconnection. The total volume of natural gas delivered to Blue Lake by ANR during the Summer Period would be a volume of natural gas no greater than ANR's Maximum Storage Volume, at daily volumes no greater than the Maximum Daily Injection Quantity, plus a volume of gas for compressor fuel usage equal to 1.3 percent of the volumes delivered.

Blue Lake explains that during each Winter Period (November 1-March 31), Blue Lake would redeliver to ANR at the Blue Lake Interconnection, the daily volumes ANR may request up to the Maximum Daily Withdrawal Quantity, less a volume of gas for compressor fuel usage equal to 0.6 percent of the volumes requested to be withdrawn at the Blue Lake Interconnection. It is explained that ANR in turn would redeliver equivalent volumes either to Great Lakes at the Deward Interconnection or to MichCon at the proposed Kalkaska Interconnection, for transportation and ultimate redelivery to ANR and/or its customers. Blue Lake states that the transportation service by Great Lakes would be provided under Great Lakes' existing open access blanket certificate. Transportation by MichCon would be provided under MichCon's Hinshaw pipeline blanket certificate.

Blue Lake explains that as considerations for it providing the storage service, ANR would pay Blue Lake the charges set forth in Article VIII of the Storage Agreement. Blue Lake explains that such charges are consistent with the Commission's current policy on contract storage rate design and include a monthly Deliverability rate of $1.91438 per Mcf of Storage Demand Withdrawal Quantity, a Monthly Capacity Rate of $0.02735 per Mcf of Maximum Storage Volume, an injection commodity rate of $0.01035 per Mcf.

It is stated that the primary term of the Storage Agreement between Blue Lake and ANR is twenty (20) years, commencing April 1, 1993, or on such later date as Blue Lake may notify ANR that the storage facilities are ready to accept deliveries of gas for storage.

In order to develop and operate the storage field at the proposed working capacity of 42 Bcf, Blue Lake would acquire 5 existing wells, drill and complete 16 new injection/withdrawal wells, and construct and operate a gathering system, injection withdrawal facilities, and an 18,000 horsepower class compressor station with all ancillary facilities. Blue Lake states that total base gas requirements for the capacity of 42 Bcf will be 7.5 Bcf. The estimated cost for developing 42 Bcf of storage is $133 million dollars.

Blue Lake states that total cost of this project is $132,723,000. Blue Lake explains that the project would be initially financed through equity contributions and short-term loans. The short-term loans would be repaid from the proposed issuance of $101,230,000 long-term debt securities of Blue Lake.

Comment date: September 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

15. Northern Natural Gas Co.

[Docket No. CP91-2759-000]

Take notice that on August 12, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP91-2759-000, an application pursuant to § 7(c) of the Natural Gas Act for issuance of a certificate of public convenience and necessity authorizing Northern to: (1) Operate and maintain certain existing pipeline, metering, and appurtenant facilities in the state of Kansas as jurisdictional facilities; and (2) to provide new jurisdictional sales service of 8,248 MMBtu per day under Northern's Argus Rate Schedule to Peoples Natural Gas Company, Division of Utilicorp United Inc. (Peoples), a local distribution company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the facilities to be certificated were installed and are operated by Northern pursuant to section 311 of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations (18 CFR 284.3(c)).

Northern states that it currently has two firm transportation agreements in place to serve Dodge City. One self-implementing transportation agreement, with a maximum contract quantity of 8,248 MMBtu per day, commenced December 1, 1990 and has a primary term of ten (10) years ending November 20, 2000. The second firm transportation agreement, also with a maximum contract quantity of 8,248 MMBtu per day, commenced March 25, 1991 for a term ending March 31, 2001, will terminate and be replaced by firm sales service for the same quantity under the Argus Rate Schedule when such sales service is authorized by the Commission. Thus, Northern will provide 16,496 MMBtu per day of firm natural gas service to Peoples for Dodge City for a term of ten (10) years. Currently, Northern cannot provide jurisdiction services through these facilities because the facilities are limited to use for transportation service in accordance with subpart B of part 284 of the Commission's Regulations.

Northrn states that it does not propose to construct any new facilities since the proposed services can be accomplished without constructing new facilities or rearranging presently authorized facilities.

Comment date: September 9, 1991, in accordance with Standard Paragraph F at the end of the notice.

16. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-2743-000]

Take notice that on August 12, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP91-2743-000 an application pursuant to § 7(b) of the Natural Gas Act requesting an order permitting and approving the abandonment of a transportation service for Trunkline Gas Company (Trunkline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that by Commission order issued September 20, 1982 in Docket No. CP82-290-000 it was authorized to receive, transport and redeliver on a firm basis up to 10,000 Mcf of natural gas per day for Trunkline pursuant to a transportation agreement dated February 23, 1982, and designated as Rate Schedule T-64 in Panhandle's FERC Gas Tariff, Original Volume No. 2. Panhandle further states that in accordance with the transportation agreement it receives gas from Trunkline at a subsea tap located in Vermilion Block 340, offshore Louisiana and then transports and redelivers the gas to a subsea tap interconnection with Stingray Pipeline Company located in Vermilion Block 321, offshore Louisiana.

Panhandle states that a review of the pipeline capacity, reserve estimates and ongoing exploration and development in the area indicates that Trunkline's gas can be transported on an interruptible basis. Panhandle further states that in accordance with the transportation agreement either party may terminate the agreement by giving one year's prior written notice and that Trunkline has provided such written notice to Panhandle on February 25, 1991. Therefore, Panhandle requests that the abandonment of the transportation service provided by Panhandle for Trunkline be effective February 25, 1992.

Comment date: September 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

17. Pacific Gas Transmission Co.

[Docket No. CP91-2742-000]

Take notice that on August 12, 1991, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP91-2742-0000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct certain modifications to existing meter stations serving as delivery points for transportation service to Cascade Natural Gas Corporation (Cascade), a local distribution company, under PGT's blanket certificate issued in Docket No. CP82-530-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which on file with the Commission and open to public inspection.

PGT proposes to make the modifications in order to increase deliverability at the Prineville, Bend and Stearns (Sunriver) meter stations, located on PGT's mainline in central Oregon. It is stated that the proposed design capacity would allow for deliveries of up to 3,637 MMBtu per day at Prineville, 15,030 MMBtu at Bend and 3,142 MMBtu at Stearns. PGT asserts that Cascade has asked for the increased capacity because deliveries in December 1990 actually exceeded design capacity. It is stated that PGT transports natural gas on behalf of Northwest Pipeline System (Northwest) on a firm basis pursuant to a transportation agreement dated July 15, 1981, and that Northwest, in turn, delivers gas to Cascade at the delivery points on PGT's system. It is asserted that the proposed modifications would not result in any increase in the total volume of gas transported by PGT for either Northwest or Cascade. It is explained that PGT has been reimbursed for the costs of the three meter stations by Northwest.

PGT also proposes to abandon certain existing components at these meter stations and to replace them with new components.

Comment date: October 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 175.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20455 Filed 8-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-08903T Texas-10 Addition 4]

State of Texas; Determination Designating Tight Formation

August 20, 1991.

Take notice that on August 15, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Edwards Limestone Formation in a portion of La Salle County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers approximately 12,480 acres in La Salle County, and consists of the following surveys: The E½ and the E½ if the W½ of the J.B. Yaeger Survey A-1104, Section 114; the E½ and the E½ of the W½ of the H&G N.R.R. Survey A-256, Section 113; all of the H&G N.R.R. Survey A-246, Section 93; all of the C. Sullivan Survey A-1080, Section 94; all of the L.W. Earnest Survey A-987, Section 88; all of the H&G N.R.R. Survey A-243, Section 87; all of the H&G N.R.R. Survey A-233, Section 67; all of the G.W. Von Roeder Survey A-1311, Section 68; all of the H&G N.R.R. Survey A-231, Section 63; all of the R. Curtis Survey A-1140, Section 62; all of the H&G N.R.R. Survey A-230, Section 61; all of the R. Curtis Survey A-1142, Section 40; all of the H&G N.R.R. Survey A-220, Section 41; all of the S. Hummell Survey A-1391; Section 42; all of the H&G N.R.R. Survey A-217, Section 35; all of the G.W. Von Roeder Survey A-1314, Section 34; all of the H&G N.R.R. Survey A-216, Section 33; all of the H&G N.R.R. Survey A-323, Section 249; all of the R. Curtis Survey A-1138, Section 248; and all of the H&G N.R.R. Survey A-322, Section 247. The notice of determination also contains Texas' findings that the referenced portion of the Edwards Limestone Formation Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20453 Filed 8-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10669-003 Idaho]

New York Irrigation District, Boise-Kuna Irrigation District, Wilder Irrigation District, Big Bend Irrigation District, Nampa and Meridian Irrigation District; Surrender of Preliminary Permit

August 20, 1991.

Take notice that the New York Irrigation District, et al., Permittee for the Twin Springs Irrigation Reservoir and Hydroelectric Project No. 10669, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10669 was issued August 15, 1989, and would have expired July 31, 1992. The project would have been located on the Boise River partially within the Boise National Forest near Idaho City in Elmore County, Idaho.

The Permittee filed the request on July 31, 1991, and the preliminary permit for Project No. 10669 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20452 Filed 8-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP91-13-000]

Phillips Petroleum Co. and Marathon Oil Co.; Petition for a Declaratory Order

August 20, 1991.

Take notice that on August 14, 1991, Phillips Petroleum Company (Phillips) and Marathon Oil Company (Marathon) filed a petition for a declaratory order, pursuant to § 385.207 of the Commission's Rules of Practice and Procedure, that certain natural gas

produced by Phillips and Marathon in the area of Cook Inlet, Alaska, was, during the period from December 1, 1978, through 1985, subject to maximum lawful prices under title I of the Natural Gas Policy Act of 1978 (NGPA).

Phillips and Marathon state that during the period in question they produced natural gas in the Cook Inlet area and transported such gas to the Kenai liquefication plant. At the plant, Phillips and Marathon state, they manufacture LNG, which they ship to Japan by cryogenic tanker and sell to Japanese utilities in Tokyo Bay.

The petition states that, under Alaska law, the natural gas produced by Phillips and Marathon cannot be valued, for state production tax purposes, at levels higher than any maximum lawful prices applicable under the NGPA. Phillips and Marathon maintain that, during the period in question, certain maximum lawful prices did apply, while the Alaska state tax authorities have taken the opposite position.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such protests or motions should be filed on or before September 23, 1991. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20454 Filed 8-26-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; During the Week of July 19 Through July 26, 1991

During the Week of July 19 through July 26, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 19 through July 26, 1991]

Date	Name and Location of Applicant	Case No.	Type of Submission
July 22, 1991	Charlie Case Tire Company, Phoenix, AZ	LFA-0138	Appeal of an information request denial. If granted: Charlie Case Tire Company would receive access to certain information in addition to that released under FOIA request NV9126RREECO, regarding bid information from JIT Contract RFP 3-SH-91.
July 23, 1991	Texaco/Sadler Texaco, Jacksonville, FL	RR321-76	Request for modification/rescission in the Texaco refund proceeding. If granted: The July 30, 1991 decision and order (Case Nos. RF321-466 & RF321-4555) issued to Sadler Texaco regarding the firm's application for refund submitted in the Texaco refund proceeding would be modified.
July 24, 1991	Permian Corporation, Washington, DC	LEF-0035	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR, 205, subpart V, in connection with a March 1982 consent order entered into with the Department of Energy.
July 25, 1991	Gulf/Thorson Oil, Inc., Washington, DC	RR300-94	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 17, 1988 decision and order (Case No. RF300-1209) issued to Thorson Oil, Inc., regarding the firm's application for refund submitted in the Gulf refund proceeding would be modified.
July 25, 1991	Murphy/Lemmen Oil Company, Washington, DC	RR309-9	Request for modification/rescission in the Murphy refund proceeding. If granted: The July 5, 1991 decision and order (Case No. RF309-523) issued to Lemmen Oil Company regarding the firm's application for refund submitted in the Murphy refund proceeding would be modified.
July 26, 1991	Midland Asphalt Corporation, Tonawanda, NY	RR272-81	Request for modification/rescission in the crude oil refund proceeding. If granted: The June 17, 1991 dismissal letter (Case No. RF272-37291) issued to Midland Asphalt Corp. regarding the firm's application for refund submitted in the crude oil refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case Number
7/19/91 thru 7/26/91.	Texaco Refund Applications Received.	RF321-16284 thru RF321-16316.
7/19/91 thru 7/26/91.	Crude Oil Refund Applications Received.	RF272-89481 thru RF272-89516.
7/19/91 thru 7/26/91.	Gulf Oil Refund Applications Received.	RF300-17201 thru RF300-17301.
7/19/91	Cenex	RF322-11.
7/22/91	Dawson Oil Co., Ltd.	RF340-3.
7/22/91	Paul A. Dever State School.	RF336-21.
7/22/91	Transcon Lines	RF304-12358.
7/23/91	Betty A. Warman	RF335-34.
7/23/91	Bull Moose Tube Co.	RF335-35.
7/24/91	Permian Petrol. Co.	RF340-4.
7/25/91	Martin Dixon	RF335-36.
7/25/91	John Deere Des Moines Works.	RF340-5.
7/25/91	G&S Oil Company	RF304-12359.
7/25/91	Tom's Truck Stop	RF304-12360.
7/26/91	Rinaldis Transportation Co.	RF341-1.
7/26/91	Tesoro Petroleum Corp.	RF339-2.
7/26/91	Emmett Peterson	RF272-127.

[FR Doc. 91-20471 Filed 8-26-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; During the Week of July 8 Through July 12, 1991

During the week of July 8 through July 12, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Charles T. McCaffrey, 7/11/91, LFA-0132

Charles T. McCaffrey filed an Appeal from a determination issued by the DOE's Office of the Inspector General (OIG) of a request for information under the Freedom of Information Act. Mr. McCaffrey had sought information concerning the distribution of federal funds under the Personnel Retention Program of a contract between the Department of Energy (DOE) and AiResearch Manufacturing Company. The Appellant claimed that the material upon which the OIG's determination was based was not responsive to his request. In considering the Appeal, the Office of Hearings and Appeals (OHA) found that the OIG's search had produced a wider range of documents than specifically requested by the Appellant but that any responsive material should have been uncovered by the parameters of the search. Neither the fact that the OIG's determination included documents that were merely peripheral to the Appellant's request, nor the Appellant's expectation that other responsive material exists, indicates that the OIG's search was inadequate. For these reasons, the OHA determined that the OIG's search was reasonably calculated to uncover all materials sought by the Appellant, and was clearly adequate under the FOIA. Accordingly, the Appeal filed by Mr. McCaffrey was denied.

Glen Milner, 7/12/91, LFA-0127

Glen Milner filed an Appeal of a determination issued by the Albuquerque Operations Office (Albuquerque Operations) of the Department of Energy (DOE) of an application for a waiver of fees in connection with a request for information which he had submitted under the Freedom of Information Act (FOIA). Albuquerque Operations had requested payment of $234.62 before releasing redacted copies of documents dealing with the Trident I and Trident II warheads and their shipment. In considering the Appeal, the DOE found that Albuquerque Operations had correctly denied Mr. Milner's request for a remission of fees. In particular, the DOE held that release of the redacted documents would not disclose significant information or significantly contribute to the public understanding of the operations and activities of the government or of the subject-matter involved. The DOE also determined that Albuquerque Operations correctly charged Mr. Milner for search and reproduction costs as required by the FOIA. The DOE rejected Mr. Milner's claim that the fee should be reduced because of his asserted connection to the Ground Zero Center for Nonviolent Action and his dissemination of prior material to other interested parties and the news media. Accordingly, the Appeal was denied.

Implementation of Special Refund Procedures

Enron Corp., 7/10/91, KEF-0116

The Department of Energy (DOE) issued a Decision and Order implementing procedures for the distribution of $48,000,000, plus interest, in refined product and crude oil overcharge funds obtained from Enron Corp. pursuant to a Consent Order executed between Enron Corp. and the DOE on July 27, 1981. The DOE determined that $43,200,000 of the funds will be distributed to purchasers of Enron Corp. refined petroleum products during the period from June 13, 1973 until the date that the product claimed was decontrolled. The remaining $4,800,000 of the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. The specific information to be included in an Application for Refund is specified in the Decision and Order.

Refund Applications

John J. Hudson, Inc., 7/12/91, RR272-64

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by John J. Hudson, Inc. (Hudson) asking the DOE to reconsider the denial of its Application for Refund filed in the Subpart V crude oil special refund proceeding. The original application was denied because Hudson was a retailer of petroleum products and had failed to establish that it was injured by crude oil overcharges. Hudson did not submit any new information which would lead the DOE to a different determination than that made in the original Decision and Order. Therefore, the Motion for Reconsideration was denied.

Palo Pinto Oil & Gas/Utah, RQ5-568, RQ1-569; Vickers Energy Corp./Utah, RQ3-570; National Helium Corp./Utah, RQ2-571; Coline Gasoline Corp./Utah, RQ251-572; Standard Oil Co. (Indiana)/Utah, RQ8-573; Belridge Oil Co./Utah, RQ8-250; Belridge Oil Co./Utah, RQ251-251; Standard Oil Co. (Indiana)/Utah, 7/10/91, RQ21-252

The Department of Energy issued a Decision and Order granting a request by the State of Utah to use $230,268 in oil overcharge monies to fund the following energy conservation projects for indirect restitution to injured Utah citizens: The Home Energy Audit and No-Cost/Low Cost Energy Efficiency Improvement program, the Irrigation Audit program, the Innovative Techniques Clearinghouse program, the Model Farm program, Retrofitting and Weatherization programs, and a Solar Power Irrigation program.

Sauvage Gas Company, Inc./John E. Jones Oil Company, Inc. et al., 7/9/91, RR308-4 et al.

The DOE issued a Decision and Order denying four Motions for Reconsideration in the Sauvage Gas Company, Inc. special refund proceeding. The movants requested that

the DOE modify a June 26, 1991 Decision and Order in which the DOE determined that they were spot purchasers and denied their refund applications. The information presented in the Motions reinforced the DOE's finding that they were spot purchasers. Since spot purchasers are not presumed to be injured and the movants did not attempt to demonstrate injury, they were deemed to be ineligible for refunds. Accordingly, their Motions for Reconsideration were denied.

Texaco Inc./Gerstmann Texaco, 7/10/91, RR321-73

The DOE granted a Motion for Reconsideration filed by Thelma A. Gerstmann. The DOE modified its May 10, 1991 Decision and Order that rescinded the entire refund originally granted to Thelma A. Gerstmann in Case No. RF321-3672. *See Texaco Inc./Gerstmann Texaco,* 21 DOE ¶ 85,247 (1991). In the May 10 Decision, the applicant was ordered to repay $2,875 (the amount of her refund plus interest that would have accrued in escrow to the current date) because she did not respond to DOE requests that she substantiate her claim. The applicant presented valid reasons for reconsideration of her refund claim and substantiated a portion of her original claim. The DOE therefore reconsidered the May 10 decision and Ms. Gertsmann was ordered to remit $321 ($257 principal and $64 interest) to the DOE.

Town of Gilford, 7/10/91, RF272-71298

The DOE issued a Decision and Order granting an Application for Refund filed by the Town of Gilford in the Subpart V crude oil refund proceeding. The applicant, a municipality, purchased road oil, liquid asphalt, gasoline, diesel fuel, and lubricants during the crude oil price control period. The DOE determined that the applicant was an end-user of the petroleum products that it purchased. To calculate its refund amount, the DOE used the State Energy Price and Expenditure Data Systems compiled by the Energy Information Administration of the DOE to convert the Town's lubricant purchases, which were given in dollar amounts, from dollars expended to gallons purchased. The refund granted to the Town of Gilford is $657.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Aminoil U.S.A., Inc./Plymouth LP Gas Corporation.	RF139-207	07/12/91
Atlantic Richfield Co./John's Arco.	RF304-8013	07/12/91
Azzarito's Arco	RF304-8114	
Atlantic Richfield Co./Sam F. Arledge Oil Co.	RF304-8947	07/08/91
Hardy Oil Company/	RF304-10458	
Isiminger's Auto Servicenter.	RF304-12126	
Bullhead City School District #15.	RF272-78772	07/10/91
Castle Rock Sch. District 401 *et al.*	RF272-82415	07/11/91
Fletcher Oil & Refining Co./ Arax Gas Station.	RF329-5	07/09/91
Gulf Oil Corporation/ C.G. Sweigart Oil Company.	RF300-12618	07/10/91
Richardson Oil Company.	RF300-12635	
Gulf Oil Corporation/ Darby Gas & Oil Company, Inc.	RF300-12839	07/08/91
Darby Gas & Oil Company, Inc.	RF300-12840	
Darby Gas & Oil Company, Inc.	RF300-14509	
Gulf Oil Corporation/ Longway Petroleum Company *et al.*	RF300-12373	07/10/91
Gulf Oil Corporation/R. Stone Enterprises, Inc. *et al.*	RF300-10938	07/08/91
Maine School Admin. District 13 *et al.*	RF272-83608	07/11/91
Mathis Ind. Sch. District *et al.*	RF272-84000	07/12/91
Palm Beach Reg. Hospital *et al.*	RF272-85211	07/11/91
Prescott School District *et al.*	RF272-85004	07/11/91
R&G Sloane Manufacturing Co., Inc..	RF272-73822	07/11/91
Santa Fe Drilling Company.	RF272-28269	07/12/91
Santa Fe Drilling Company.	RD272-28269	
Solvay Union Free Sch. District *et al.*	RF272-81800	07/11/91
Success R-VI School *et al.*	RF272-81622	07/10/91
Tesoro/San Diego Gas & Electric Company.	RF326-300	07/10/91
Texaco Inc./ Haleakala Dairy Incorporated.	RF321-15139	07/11/91
Haleakala Dairy	RF321-15849	
The West End Brewing Company.	RF272-13973	07/09/91
The West End Brewing Company.	RD272-13973	
Vermont Agency of Transportation *et al.*	RF272-67509	07/12/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Anguilla School District	RF272-81337
Aurora Hills Texaco	RF321-2159
Bernard Hanft	LFA-0133
Charleston County School District	RF272-86642
Chelan County, WA	RF272-86491
Chicot County Road Department	RF272-86405
City of Madera, CA	RF272-89339
City of Midwest City, OK	RF272-84776
City of Morehead, KY	RF272-86720
City of Post Falls, ID	RF272-88129
Consolidated Edison Company of New York, Inc.	KER-0042
Consolidated Edison Company of New York, Inc.	KFS-0009
Consolidated Edison Company of New York, Inc.	RS272-1
Danley's Texaco	RF321-3712
Dearborn Board of Education	RF272-86237
Department of Water & Power	RF315-10148
Department of Water & Power	RF329-4
Jerry's Biltmore Gulf, Inc	RF300-14044
Mr. C.C. Floyd	RF272-86468
Muhlenberg School District	RF272-82184
New Enterprise Stone & Lime Co., Inc.	RF272-32283
North Merrick Union Free School District.	RF272-84692
R&C Gulf	RF300-11047
R.A. Weidner, Inc	RF300-11260
Rainey's Texaco	RF321-3728
Rockaway Borough Board of Education.	RF272-82733
Roland-Story Community School District.	RF272-84767
Rome City School District	RF272-76169
Ronning Texaco	RF321-14802
Samuel J. Tripp	RF300-12313
Samuel J. Tripp	RF300-12314
Sharkey-Issaquena Line Consolidated Schools.	RF272-82499
Special School District of St. Louis County.	RF272-83906
Thomas Texaco	RF321-3185
Trinity Union High School District	RF272-87366
Triple L/Three L, Inc	RF321-15791
Twin Hills Union School District	RF272-87372
University of MA Medical Center	RF272-86032
Village of Maywood, IL	RF272-89323
Winn Parish, LA	RF272-86196

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-20472 Filed 8-26-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3989-4]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Mobil Exploration and Producing U.S. Inc., Moco and Alberta-Shale Properties (EPA Project Number SJ 89-01 and SJ 89-02)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 6, 1991 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR § 52.21 to the applicant named above. The PSD permits grants approval for the expansion of existing crude oil production facilities located on the MOCO & Alberta-Shale properties in Kern County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: PM_{10} at 0.303 lbs/hr, NO_x at 2.71 lbs/hr.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A-3-1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1244, FTS 484-1244.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements for MOCO & Alberta-Shale include oxygen controls, low NO_x burner, flue gas recirculation system, combustor water injection and selective catalytic reduction system.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by October 28, 1991.

Dated: August 20, 1991.

Carl C. Kohnert,

Acting Director, Air and Toxics Division, Region 9.

[FR Doc. 91-20510 Filed 8-26-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3988-8]

National Advisory Council for Environmental Policy and Technology (NACEPT); Meeting

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of the meeting of the Management Practices/Communication Work Group of the Chemical Accident Prevention (CAP) Subcommittee of the Environmental Measurements and Chemical Accident Prevention (EMCAP) Committee. The EMCAP committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The meeting will convene September 24, from 7:45 a.m. to 6 p.m. at the DuPont Belle Plant, 901 West DuPont Avenue, Belle, West Virginia 25015.

The Management Practices Work Group of the CAP Subcommittee is looking to identify management practices that prevent chemical accidents and to find ways of communicating these practices to those who produce, use or store chemicals. Specifically, the work group will focus on how to develop and improve the transfer of technology information on how to prevent accidents to industry, the public and labor in a form that they can understand and use. This meeting will be a planning session and will provide the work group with first hand experience of chemical process safety management.

Dated: August 21, 1991.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 91-20507 Filed 8-26-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3989-5]

Public Water System Supervision Program Revision for the State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of § 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Colorado has revised its approved Public Water System Supervision (PWSS) Primacy Program. Colorado has developed: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690); and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations and has approved these State program revisions. This determination shall become effective September 26, 1991, and was based upon a thorough evaluation of Colorado's PWSS program which has met the requirements stated in 40 CFR 142.10.

Colorado's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before September 26, 1991. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: James J. Scherer, Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, CO 80202-2405.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following (1) the name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, and signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Colorado. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Colorado. The hearing notice will

include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on September 26, 1991.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: U.S. EPA Region VIII Regional Library, 999 18th Street, Denver, Colorado 80202–2405, between the hours of 10 a.m. and 4 p.m. (MST), Mon.–Fri., the Public Library District, Attn: Reference Department, 100 East Abriendo, Pueblo, CO 81004 (719) 543–9600, and the Mesa County Public Library, 500 Grand Avenue, Grand Junction, Colorado 81502.

FOR FURTHER INFORMATION CONTACT: Bob Clement, EPA Region VIII, Public Water Supply Program Section (8WM–DW) at the Denver address given above, telephone (303) 293–1417, (FTS) 330–1417.

Dated: August 19, 1991.

Jack McGraw,

Acting Regional Administrator, EPA, Region VIII.

[FR Doc. 91–20504 Filed 8–26–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95–454), Chairman Alfred C. Sikes appointed the following executives to the Executive Resources and Performance Review Board: Andrew S. Fishel, Robert M. Pepper, Richard C. Firestone, Robert L. Pettit, Roy J. Stewart, Walda W. Roseman.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–20478 Filed 8–26–91; 8:45 am]

BILLING CODE 67'2–01–M

FEDERAL MARITIME COMMISSION

A.P. Moller-Maersk Line et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008900–046.

title: The "8900" Lines Agreement.

Parties:

A.P. Moller-Maersk Line, National Shipping Company of Saudi Arabia, Sea-Land Service, Inc., United Arab Shipping Company (S.A.G.), Waterman Steamship Corporation.

Synopsis: The proposed amendment would delete Canada from the geographic scope and delete other references to Canada in the Agreement.

Agreement No.: 224–200556.

Title: North Carolina State Ports Authority/Polish Ocean Lines Marine Terminal Agreement.

Parties:

North Carolina State Ports Authority ("SPA"), Polish Ocean Lines ("POL").

Synopsis: The Agreement, filed August 14, 1991, provides for throughput rates on loaded and empty containers and defines the services included in those rates. The Agreement has an initial period of one year.

Agreement No.: 224–200557.

Title: West Indian Company, Ltd./ Virgin Islands Port Authority Settlement Agreement.

Parties:

West Indian Company, Ltd. ("WICO"), Virgin Islands Port Authority ("Port Authority").

Synopsis: The proposed agreement provides that the Port Authority will maintain its passenger wharfage charges for use of its St. Thomas facilities at a level of not less than $3.50 per passenger for five years, effective not later than April 1, 1992. It further provides that WICO agrees to dismiss its complaint against Port Authority, subject to fulfillment by Port Authority of the terms of the settlement agreement. This settlement resulted from the proceeding under FMC Docket No. 91–9.

Dated: August 21, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–20445 Filed 8–26–91; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families; General Reorganization; Statement of Organization, Functions and Delegations of Authority

This notice establishes Part K, Administration for Children and Families, in The Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services. This notice announces the organizational structure and assignment of responsibilities for the Administration for Children and Families, as established April 15, 1991 (56 FR 15865). In addition, it also identifies the Program Delegations to the Assistant Secretary for Children and Families. Delete part M in its entirety and delete all Chapters of part D with the exception of DG, Administration on Aging and DD, HDS Regional offices. Part K should be established as follows:

K.00 Mission. The Administration for Children and Families (ACF) provides national leadership and direction to plan, manage and coordinate the nationwide administration of comprehensive and supportive programs for vulnerable children and families. The Administration oversees and finances a broad range of programs for children and families, including Native Americans, persons with developmental disabilities, refugees, and legalized aliens, to help them develop and grow toward a more independent, self-reliant life. These programs, carried out by state, county, city, and tribal governments, and public and private local agencies, are designed to promote stability, economic security, responsibility and self-sufficiency.

The Administration coordinates development and implementation of family-centered strategies, policies, and linkages among its programs, and with other federal and state programs serving children and families. The

Administration's programs assist families in financial crisis, emphasizing short-term financial assistance, and education, training and employment for the long term. Its programs for children and youth focus on those children and youth with special problems, including children of low-income families, abused and neglected children, those in institutions or requiring adoption or foster family services, runaway youth, children with disabilities, migrant children, and Native American children. The Administration promotes the development of comprehensive and integrated community and home-based modes of service delivery where possible.

The Administration provides national leadership to develop and coordinate public and private programs and serves as a focal point for states in the provision of financial assistance and intervention programs which promote and support permanence for children and family stability. The Administration advises the Secretary on issues pertaining to children and families, including Native Americans, people with developmental disabilities, refugees and legalized aliens.

K.10 Organization. The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services. The Administration is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition to the Assistant Secretary, the Administration consists of the Principal Deputy Assistant Secretary, the Deputy Assistant Secretary for Program Operations, the Deputy Assistant Secretary for Policy and External Affairs, and Staff and Program Offices. ACF is organized as follows:

Office of the Assistant Secretary for Children and Families (KA)
Administration for Children, Youth and Families (KB)
Administration on Developmental Disabilities (KC)
Regional Offices for Children and Families (KD 1–X)
Administration for Native Americans (KE)
Office of Child Support Enforcement (KF)—(which will remain as a separate organizational unit)
Office of Community Services (KG)
Office of Family Assistance (KH)
Office of Program Support (KI)
Office of Information Systems Management/Child Support Information Systems (KJ)
Office of Financial Management (KK)
Office of Management (KL)
Office of Policy and Evaluation (KM)
Office of Public Affairs (KN)
Office of Refugee Resettlement (KO)

K.20 Functions. The Administration develops, recommends and issues policies, procedures and interpretations to provide direction to the programs it administers. It directs reviews, provides consultation and conducts negotiations to achieve adherence to federal law and regulations for administration of its programs. It designs and administers systems and directs reviews of the programs to ensure cost-effectiveness, efficiency, quality, and financial integrity. The Administration provides technical assistance, conducts research and evaluation, and promotes information sharing for its programs. It also provides departmental leadership and guidance in the development and implementation of policies and standards applicable to state data systems development, information systems sharing, financial integrity, and quality assurance activities. The functions of the organizational elements of ACF are summarized in this chapter and are described in detail in successive chapters.

A. The Office of the Assistant Secretary for Children and Families provides executive direction, leadership, and guidance to all ACF components. The Office advises the Secretary and Deputy Secretary on ACF programs and recommends actions and strategies to improve coordination of ACF efforts with other programs, agencies and governmental levels (or jurisdictions). The Office directs equal employment opportunity and civil rights policies and programs for ACF.

B. The Administration on Children, Youth and Families (ACYF) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to the sound development of children, youth, and families. ACYF administers state grant programs under titles IV–B and IV–E of the Social Security Act; manages the Adoption Opportunities program and other discretionary programs for the development and provision of child welfare services; administers discretionary grant programs providing Head Start services and Runaway Youth facilities; administers the Child Abuse Prevention and Treatment Act; and supports and encourages services which prevent or remedy the effects of abuse and/or neglect of children and youth. It administers the Child Care and Development Block Grant and manages initiatives to involve the private and voluntary sectors in the areas of children, youth, and families.

C. The Administration on Developmental Disabilities (ADD) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to persons with developmental disabilities. ADD serves as the focal point in the Department to support and encourage the provision of quality services to persons with developmental disabilities. ADD assists states, through the design and implementation of a comprehensive and continuing state plan, to improve service outcomes by increasing the independence, productivity and community inclusion of persons with developmental disabilities. This plan makes optimal use of all existing federal and state resources for the provision of services and support to people with developmental disabilities and their families to achieve these outcomes. ADD works with states to ensure that the rights of all persons with developmental disabilities are protected.

ADD administers the Basic State Grant program and other discretionary programs for the provision of services to persons with developmental disabilities under the Developmental Disabilities Assistance and Bill of Rights Act; serves as a clearinghouse and resource for information for service providers at the national, regional, state and local levels in the development of policies and programs to reduce or eliminate barriers experienced by developmentally disabled persons; and supports and encourages programs or services to prevent developmental disabilities.

D. The Regional Offices of the Administration for Children and Families (ACF), located at the ten DHHS regional office sites, represent ACF to state, county, city and tribal governments, and public and private organizations. The regions administer programs which assist vulnerable children and families to develop and grow toward a more independent, self-reliant life. These programs include: Aid to Families with Dependent Children, Head Start, Child Support Enforcement, Job Opportunities and Basic Skills Training, Repatriation, Foster Care and Adoption Assistance, Runaway and Homeless Youth, Child Care, and Developmental Disabilities.

E. The Administration for Native Americans (ANA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders, hereinafter

referred to as Native Americans. The Administration for Native Americans serves as the focal point in the Department for the full range of developmental, social, and economic strategies that support Native American self-determination and self-sufficiency. ANA administers grant programs to eligible Indian tribes and Native American organizations in urban and rural areas.

Through its policy, liaison, and programmatic grant functions, ANA explores new program concepts and new methods for increasing the social and economic development of Native Americans; ensures that information about departmental services and benefits and eligibility criteria is available to Native Americans, and fosters the opportunity for the exercise of self-determination of Native Americans and their operation of Native American programs and enterprises.

F. The Office of Child Support enforcement (OCSE) advises the Secretary on matters relating to child support enforcement. The Office provides direction, guidance and oversight to state Child Support Enforcement (CSE) program offices and on activities authorized and directed by title IV–D of the Social Security Act and other pertinent legislation. The general purpose of the CSE legislation is to require states to develop programs for establishing and enforcing support obligations by locating absent parents, establishing paternity when necessary, and obtaining child support. The Office assists states in establishing adequate reporting procedures and maintaining records for the operation of the CSE programs and of amounts collected and disbursed under the CSE programs and the costs incurred in collecting such amounts. The Office validates applications from states for permission to utilize the courts of the United States to enforce orders for support against absent parents and operates the Federal Parent Locator Service. It certifies to the Secretary of the Treasury the amounts of child support obligations that require collection in appropriate instances.

G. The office of Community Services (OCS) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to community programs that promote economic self-sufficiency. The Office is responsible for administering programs that serve low-income and needy individuals and address the overall goal of personal responsibility and achieving and maintaining self-sufficiency. It administers the Community Services Block Grant (CSBG), Social Services Block Grant (SSBG), and the Low Income Home Energy Assistance Program (LIHEAP). It administers a variety of discretionary grant programs that foster family stability, economic security, responsibility and self-support, promote and provide services to homeless and low-income individuals, and develop new and innovative approaches to reduce welfare dependency.

H. The Office of Family Assistance (OFA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to public assistance and economic self-sufficiency programs. The Office provides direction and technical guidance to the nationwide administration of the following programs: Aid to Families with Dependent Children (AFDC), Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands, the Emergency Assistance Program (EA), the Job Opportunities and Basic Skills Training Program (JOBS), and child care under title IV–A of the Social Security Act. OFA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. The Office assesses the performance of states in administering public assistance programs; reviews state planning for administrative and operational improvements; and supports actions to improve effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to federal law and regulations in state plans for public assistance program administration.

I. The Office of Program Support (OPS) advises the Assistant Secretary for Children and Families on all aspects of financial management and information resource management, except for child support enforcement state systems projects. The Director serves as the ACF Chief Financial Officer (CFO) and carries out, on behalf of the Assistant Secretary for Children and Families, the responsibilities assigned to ACF under the CFO Act of 1990 and by the HHS CFO. The Office provides leadership to all ACF components on ensuring compatibility among programs and for coordination of cross-cutting initiatives. The Office develops, administers and coordinates financial and budgetary policies, processes, and controls necessary to administer ACF programs and financial resources, and directs discretionary and mandatory grant business activities.

J. The Office of Information Systems Management (OISM)/Child Support Information Systems advises the Assistant Secretary for Children and Families/Director of Child Support Enforcement on issues and policies pertaining to information management. It oversees the utilization of information resources throughout ACF. It directs ACF's information systems, computer centers and communications network activities. The Office approves, monitors and certifies state information systems projects for ACF programs funded under titles IV–A, IV–B, IV–E, and IV–F of the Social Security Act. The Office establishes departmental policy and coordinates with other federal agencies regarding state computer related projects for computer matching and integrated systems. The Child Support Information Systems is a separate organizational unit which reports to the Director of Child Support Enforcement, and which approves, monitors and certifies state information systems projects as specified under title IV–D of the Social Security Act.

K. The Office of Financial Management (OFM) advises the Assistant Secretary for Children and Families on financial management matters. It provides leadership and direction on budget development and budget execution, financial and grants policy, oversight and administration of formula, entitlement, block and discretionary grants, and resolution of audit findings, disallowances and appeals.

L. The Office of Management (OM) advises and assists the Assistant Secretary for Children and Families in the broad areas of strategic planning, human resource management, organizational analysis, facilities and telecommunications management, and acquisitions management. It provides service to all ACF components on such administration and management activities as personnel, staff development, labor relations, support services, management analysis, internal controls, and organizational studies. The Office provides oversight on strategic planning efforts.

M. The Office of Policy and Evaluation (OPE) recommends to and advises the Assistant Secretary for Children and Families on all policy and programmatic matters having substantial impact on program direction in areas such as program content and objectives, program evaluation and results, and the costs and benefits of carrying out the programs. It oversees policy, congressional and legislative affairs, manages the ACF regulatory, legislative, research, demonstration and evaluation agendas, and oversees special initiatives within ACF. It plans,

develops and monitors strategies for promoting ACF policy; and analyzes the impact of programmatic alternatives, including the fiscal impact.

N. The Office of Public Affairs (OPA) coordinates public affairs and communication services for the Assistant Secretary for Children and Families and for all ACF components. OPA provides leadership, direction and oversight in promoting ACF's public affairs policies, programs and initiatives. It strategically coordinates ACF's relationship with the public and private news media and responds to all media inquiries concerning ACF programs and related issues; directs the audio-visual and publication management systems for ACF; and serves as the focal point for intergovernmental coordination activities with state and local officials, special interest groups, professional and business organizations, private and voluntary groups, and other federal agencies.

O. The Office of Refugee Resettlement (ORR) advises the Secretary, through the Assistant Secretary for Children and Families, on policies and programs regarding refugee resettlement, legalized aliens, and repatriation matters. ORR plans, develops and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. The Office provides direction and technical guidance to the nationwide administration of programs including Refugee and Entrant Resettlement; State Legislation Impact Assistance Grants (SLIAG); and the U.S. Repatriate Program.

KA.00 Mission. The Office of the Assistant Secretary for Children and Families provides executive direction, leadership, and guidance for all ACF programs. The Office provides national leadership to develop and coordinate public and private initiatives for carrying out programs which promote permanency placement planning, family stability and self-sufficiency. The Office advises the Secretary on issues affecting America's children and families, including Native Americans, persons with developmental disabilities, refugees and legalized aliens.

KA.10 Organization. The Office of the Assistant Secretary for Children and Families is headed by the Assistant Secretary who reports directly to the Secretary and consists of:

The Office of the Assistant Secretary (KA)
Executive Secretariat Office (KAB)
Regional Operations Staff (KAC)
President's Committee on Mental Retardation Staff (KAD)
Advisory Board on Child Abuse and Neglect Staff (KAE)

KA.20 Functions. A. The Office of the Assistant Secretary is responsible to the Secretary for carrying out ACF's mission and provides general supervision to the major components of ACF.

These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to assure their effectiveness, approving instructions, policies, publications, and grant awards issued by ACF, and representing ACF in relationships with governmental and non-governmental organizations. The Assistant Secretary for Children and Families also serves as the Director of the Office of Child Support Enforcement but will sign official Child Support Enforcement documents as Assistant Secretary for Children and Families. The Principal Deputy Assistant Secretary serves as alter ego to the Assistant Secretary on program matters and acts in the absence of the Assistant Secretary.

The Deputy Assistant Secretary for Program Operations serves as principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of management and regional operations, and on ongoing program policy matters. The Deputy for Program Operations serves as liaison to the General Counsel and, as appropriate, initiates action in securing resolution of legal matters relating to ACF management and program issues. The Deputy for Program Operations advises the Assistant Secretary for Children and Families on ongoing program policy matters to ensure program compliance and adherence to program statutes; and represents the Assistant Secretary for Children and Families on all programmatic and administrative litigation matters. The Deputy for Program Operations provides executive leadership and direction for the Office of Management, Regional Operations Staff, and provides day-to-day direction to the regional offices on behalf of the Assistant Secretary for Children and Families.

The Deputy Assistant Secretary for Policy and External Affairs serves as principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of legislation, policy, research, evaluation and intergovernmental affairs. The Deputy for Policy and External Affairs develops broad policy strategies and concepts pertaining to anticipated program issues and recommends legislation relevant to ACF programs. The Deputy Assistant Secretary for Policy and External Affairs represents the Assistant Secretary for Children and Families on intergovernmental matters, media affairs, and in contacts and negotiations with congressional members and staffs and executives of agencies and organizations. The Deputy for Policy and External Affairs provides executive leadership and direction to the Office of Policy and Evaluation and the Office of Public Affairs.

B. The Executive Secretariat Office ensures that issues requiring the attention of the Assistant Secretary, Principal Deputy Assistant Secretary, Deputy Assistant Secretaries and/or executive staff are addressed on a timely and coordinated basis; facilitates decisions on matters requiring immediate action including White House, congressional and secretarial assignments. The Office comprises three staffs: Correspondence and Office Liaison; Audit and Reports Clearance; and the Equal Employment Opportunity and Civil Rights staff. It serves as ACF liaison with the HHS Executive Secretariat and as audit liaison with the General Accounting Office and the Department's Office of Inspector General. It receives, assesses and controls incoming correspondence and assignments to the appropriate ACF component(s) for response and action; provides assistance and advice to ACF staff on the development of responses to correspondence and on the controlled correspondence system; coordinates and/or prepares congressional correspondence; and tracks development of periodic reports and facilitates departmental clearance. The Director of the Executive Secretariat Office serves as the Freedom of Information Act Officer for ACF and handles hot line calls received by the Office of Inspector General and the General Accounting Office on ACF operations and personnel.

The Office directs and manages the ACF Equal Employment Opportunity and Civil Rights program and provides direction and leadership on equal employment opportunity and civil rights policies and programs for ACF. Immediate oversight is provided by a staff under the direction of an EEO Manager. It plans, develops and evaluates programs and procedures designed to eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. The Equal Employment Manager reports to the Executive Secretariat, is located within the Immediate Office of the Assistant Secretary, and has responsibility for coordinating and implementing the Equal Employment

Opportunity and Affirmative Action programs for ACF in accordance with departmental policies and procedures.

C. The Regional Operations Staff supports regional offices by implementing and overseeing systems and procedures for communicating with and managing the workload emanating from the varied and diverse ACF Program Offices. The Staff Director alerts the Assistant Secretary for Children and Families and the Deputy Assistant Secretary for Program Operations on sensitive regional issues that may impact the ACF programs; monitors and evaluates regional office operations; plans for the utilization of regional resources to accomplish approved objectives; and manages a workload control system. Under the guidance of the Assistant Secretary for Children and Families, the Staff plans and carries out executive-level staff meetings. The Staff communicates the action items arising from these meetings and follows up on them to assure their completion or resolution.

D. The President's Committee on Mental Retardation Staff provides general staff support for a Presidential-level advisory body, the President's Committee on Mental Retardation. It coordinates all meetings and congressional hearing arrangements; provides such advice and assistance in the areas of mental retardation as the President or Secretary may request; prepares and issues an annual report to the President concerning mental retardation and such additional reports or recommendations as the President may require or as PCMR may deem appropriate; and evaluates the national effort to prevent and ameliorate mental retardation. It works with other federal, state, and local government and private sector organizations to achieve Presidential goals in mental retardation; develops and disseminates information to increase public awareness of mental retardation, to reduce its incidence, and to alleviate its effects. The Staff that supports the Committee reports to the Principal Deputy Assistant Secretary for Children and Families.

E. The National Advisory Board on Child Abuse and Neglect Staff provides staff support and information pertaining to studies, research, or analyses of various matters affecting child abuse and neglect for the Board to use in its deliberations and recommendations. The Staff assists the Board in preparing and submitting to the Secretary and appropriate Committees of Congress an annual report with recommendations on ways in which the purposes of the Child Abuse Prevention and Treatment Act can effectively be achieved. The Staff makes arrangements for all meetings and hearings of the Board. The Staff that supports the National Advisory Board reports to the Principal Deputy Assistant Secretary for Children and Families.

KB.00 Mission. The Administration on Children, Youth and Families (ACYF) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to the sound development of children, youth, and families by planning, developing and implementing a broad range of activities. It administers state grant programs under titles IV–B and IV–E of the Social Security Act; manages the Adoption Opportunities program and other discretionary programs for the development and provision of child welfare services; and administers discretionary grant programs providing Head Start services and facilities for runaway youth. ACYF administers the Child Abuse Prevention and Treatment Act and the Child Care and Development Block Grant. It supports and encourages services which prevent or remedy the effects of abuse and/or neglect of children and youth.

In concert with other components of ACF, the Administration on Children, Youth and Families (ACYF) develops and implements research, demonstration and evaluation strategies for the discretionary funding of activities designed to improve and enrich the lives of children and youth and to strengthen families. It administers Child Welfare Services training and Child Welfare Services research and demonstration programs authorized by title IV–B of the Social Security Act; administers the Runaway and Homeless Youth Act authorized by title III of the Juvenile Justice and Delinquency Prevention Act; and manages initiatives to involve the private and voluntary sectors in the areas of children, youth, and families.

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KBA)
Division of Program Evaluation (KBB)
Head Start Bureau (KBC)
Program Operations Division (KBC 1)
Program Support Division (KBC 2)
Children's Bureau (KBD)
Child Welfare Division (KBD 1)
Child Care Division (KBD 2)
Family and Youth Services Bureau (KBE)
Program Operations Division (KBE 1)
Program Support Division (KBE 2)
National Center on Child Abuse and Neglect (KBF)
Program Policy and Planning Division (KBF 1)
Clearinghouse Division (KBF 2)

KB.20 Functions. A. The Office of the Commissioner serves as the principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other officials of the Department on the sound development of children, youth, and families. It provides executive direction and management strategy to ACYF components. The Deputy Commissioner assists the Commissioner in carrying out the responsibilities of the Office.

Within the Office of the Commissioner, administrative staff assist the Commissioner and Deputy Commissioner in managing the formulation and execution of the budgets or programs and salaries and expenses; and in providing administrative, personnel and data processing support services.

B. Division of Program Evaluation recommends policy direction and serves as the central control point for operational and long range planning, and for planning and management of ACYF research, demonstration, evaluation and data analysis activities.

C. Head Start Bureau serves as the principal advisor to the Commissioner on issues regarding the Head Start program. It develops legislative and budgetary proposals; identifies areas for research, demonstration and developmental activities; presents operational planning objectives and initiatives relating to Head Start to the Office of the Commissioner; and oversees the progress of approved activities. It provides leadership and coordination for the activities of the Head Start program in headquarters and the regional offices, as well as for the Comprehensive Child Development Program and the Child Development Associate Scholarship Program. The Bureau represents Head Start in inter-agency activities with other federal and non-federal organizations, and directs the management of the joint Head Start—Appalachian Regional Commission programs.

1. Program Operations Division develops and coordinates program and administrative management regulations and policy for the Head Start program, provides guidance to the regional offices in carrying out these policies, and monitors their implementation.

The Division manages the Indian and Migrant Head Start program; reviews applications for programs serving Native American children and children of

migratory workers; monitors and assesses the programs and assures provision of training and technical assistance to all Head Start programs funded for Indian and migrants; and ensures consideration of the needs of Native American and migrant workers' children. It represents Head Start in negotiations concerned with the content policy and management of Head Start—Appalachian Regional Commission joint programs.

The Division manages discretionary projects assigned to the Bureau which are designed to investigate and improve the operation and management of the Head Start program; coordinates planning for training and technical assistance (T & TA) activities in Head Start; and develops the annual T & TA plan.

2. Program Support Division provides technical expertise in the component areas of Head Start education, health (medical, dental, and nutrition), social services, parent involvement, services to disabled children, and career development for Head Start program staff. It establishes program performance standards and other regulations and policy in these areas; recommends methods for monitoring and enforcing them; and develops manuals, guidance, and other policy materials aimed at improving the performance review provided to Head Start children by the centers.

The Division develops areas for research and demonstration activities to improve the quality and levels of services provided to Head Start children. The Division also manages discretionary projects assigned to the Bureau which are related to the Head Start component and other related areas, and develops training and technical assistance strategies to improve Head Start programs' performance in specific component areas for inclusion in the annual T & TA plans.

D. Children's Bureau advises the Commissioner on child welfare, foster care, adoption and child care matters. It recommends legislative and budgetary proposals, operational planning system objectives and initiatives, and projects and issue areas for evaluation, research and demonstration activities; represents ACYF in initiating and implementing inter-agency activities and projects affecting children; and provides leadership and coordination for the programs, activities, and subordinate units of the Bureau.

1. Child Welfare Division manages, coordinates and provides direction and leadership in the program operation, policy development and review activities included under title IV–B and IV–E of the Social Security Act. It advises on child welfare, foster care, adoption assistance, and independent living matters; and provides advice and guidance to regions on the implementation, operation, and review of programs under titles IV–B and IV–E. The Division provides leadership and direction for all discretionary programs in the field of child welfare, including research, demonstration and training programs.

2. Child Care Division manages, coordinates and provides direction and leadership in the program operation, policy development and review activities of the Child Care and Development Block Grant Program, the Dependent Care Planning and Development Program and Child Care Licensing and Improvement Grants. The Division coordinates with the Office of Family Assistance on child care issues, provides technical assistance, monitors state compliance with program requirements, and compiles information as necessary to meet the requirements of the law.

E. Family and Youth Services Bureau recommends to the Commissioner policy direction and programs to address youth and family issues. It assesses policies, legislation, research and demonstration, and programs which affect youth and families; recommends budgetary and legislative proposals and areas of research and demonstration discretionary activity for funding; coordinates efforts with departmental and other federal agencies; and develops program initiatives to address the needs of youth and families. The Bureau represents HHS on the Coordinating Council on Juvenile Justice and Delinquency Prevention and on the Committees of the National Institute of Corrections, and provides leadership and coordination to the operating divisions.

1. Program Operations Division develops and strengthens coordinated networks of state and local agencies or centers designed to meet the needs of runaway or homeless youth and their families. It develops and implements policy, guidelines and regulations concerning the funding and management of projects serving runaway and homeless youth funded under the Runaway and Homeless Youth Act.

The Division oversees the receipt, review, and award of applications for grants; monitors the management of center grants and provision of technical assistance to funded projects; and monitors the national communications system.

The Division provides assistance to professional and provider organizations and state and local governments in planning, developing, implementing, and evaluating programs affecting the family.

2. Program Support Division identifies the conceptual and policy framework to address issues facing families and adolescents. In conjunction with other components of ACF, it develops areas for research, demonstration and evaluation activities in family and youth matters; and identifies problems and defines critical issues for investigation. In concert with the Office of Public Affairs, the Division recommends plans and programs to increase public awareness and education about activities affecting vulnerable families and youth.

The Division coordinates the collection and dissemination of information about families and youth in conjunction with HHS offices and other agencies, and manages discretionary projects assigned to the Family and Youth Services Bureau which increase understanding of the problems of vulnerable families and youth and methods of alleviating them.

F. National Center on Child Abuse and Neglect serves as the principal advisor to the Commissioner on matters related to child abuse and neglect. It recommends legislative and budgetary proposals, operational planning system objectives and initiatives, and projects and issue areas for evaluation, research, and demonstration activities; represents ACYF in initiating and implementing inter-agency activities and projects affecting children who are abused or neglected; and provides leadership and coordination for the programs authorized under the Child Abuse Prevention and Treatment Act. It provides staff support for the activities of the Inter-Agency Task Force on Child Abuse and Neglect. The Director of the National Center on Child Abuse and Neglect serves as chairperson of the Task Force.

1. Program Policy and Planning Division. In conjunction with other ACF components, it establishes objectives, determines priorities, develops and implements research and demonstration programs and plans to prevent, identify, and treat child abuse and neglect. It manages and monitors state grant programs under the Child Abuse Prevention and Treatment Act. It implements training and technical assistance activities by managing grants and contracts.

2. Clearinghouse Division is responsible for updating and

maintaining the Information Clearinghouse on Child Abuse and Neglect on research and demonstration projects, operating programs and other activities. It compiles, analyzes, prepares and disseminates information, publications and other materials on child abuse and neglect; studies the incidence of child abuse and neglect and assists in the development of central registries and forms for reporting child abuse and neglect; and develops model systems for information collection.

KC.00 Mission. The Administration on Developmental Disabilities (ADD) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to persons with developmental disabilities. ADD serves as the focal point in the Department to support and encourage the provision of quality services to persons with developmental disabilities. ADD assists states, through the design and implementation of a comprehensive and continuing state plan, in increasing the independence, productivity and community inclusion of persons with developmental disabilities and their families. These state plans make optimal use of all existing federal and state resources for the provision of services and supports to people with developmental disabilities and their families to achieve these outcomes. ADD works with the states to ensure that the rights of all persons with developmental disabilities are protected.

ADD administers the Basic State Grant program and other discretionary programs for the provision of services to persons with developmental disabilities. In concert with other components of ACF, it develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of developmentally disabled persons. In addition, ADD serves as a resource in the development of policies and programs to reduce or eliminate barriers experienced by persons with developmental disabilities through the identification of best practices and dissemination of information. It supports and encourages programs or services to prevent developmental disabilities and manages initiatives to involve the private and voluntary sectors to benefit people with disabilities and their families.

KC.10 Organization. The Administration on Developmental Disabilities is headed by the Commissioner who reports directly to the Assistant Secretary for Children and Families. The Administration on Developmental Disabilities consists of:

Office of the Commissioner (KCA)
Administration and Planning Staff (KCB)
Office of Developmental Disabilities Programs (KCC)
Program Operations Division (KCC 1)
Program Development Division (KCC 2)

KC.20 Functions. A. The Office of the Commissioner serves as the principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other elements of the Department for persons with developmental disabilities. It provides executive direction and management strategy to ADD's components; and establishes goals and objectives for ADD programs. The Deputy Commissioner acts as Commissioner in the absence of the Commissioner.

B. Administration and Planning Staff recommends policy direction and serves as the central control point for operational and long range planning, and planning and management of ADD research, demonstration, evaluation and data analysis activities. The Staff manages the formulation and execution of the program and salaries and expenses budgets; provides administrative, personnel and data processing support services; serves as the ADD Executive Secretariat, controlling the flow of correspondence; and coordinates with appropriate ACF components in implementing administrative requirements and procedures.

In coordination with the ACF Office of Public Affairs, develops a strategy for increasing public awareness of the needs of persons with developmental disabilities and programs designed to address them.

C. Office of Developmental Disabilities Programs is headed by the Associate Commissioner who provides direction, executive management and program coordination for ADD programmatic functions including the Basic State Grant and Protection and Advocacy formula grant programs administered by the Division of Program Operations and the discretionary projects of national significance and University Affiliated Programs administered by the Division of Program Development. It ensures that priorities for experimental programs are responsive to state and local concerns and programmatic needs. The Office develops and implements monitoring activities designed to ensure compliance with federal authorizing legislation and improve programmatic outcomes for people with developmental disabilities and their families. The Associate Commissioner initiates, develops and implements interagency policy and funding agreements at the direction of the Commissioner.

1. Division of Program Operations is responsible for the coordination, management, and evaluation of the Basic State Grants Program and the Protection and Advocacy Grants Program, including the development of procedures and performance standards that ensure compliance with the Act and improve the outcomes of State Planning Councils and Protection and Advocacy Systems in increasing the independence, productivity and community inclusion of persons with developmental disabilities.

The Division conducts routine and special analyses of state plans under the Basic State Grants Program, including an examination of priority area activities, to assure consistent application of ADD program goals and objectives. The Division conducts local, state and regional reviews to ensure compliance with the Act and to improve program outcomes; and identifies and disseminates information regarding excellence in advancing the independence, productivity and community inclusion of people with developmental disabilities.

The Division initiates, executes, and supports the development of interagency, intergovernmental, and public-private sector agreements, committees, task forces, commissions, or joint funding efforts as appropriate.

The Division provides program and administrative guidance to regional offices on matters related to the implementation of the Developmental Disabilities Act; and ensures timely and effective communication with the regional offices regarding program compliance, policy clarification, and the approval of required state plans and reports.

2. Division of Program Development manages the discretionary grants and contracts mandated by the Developmental Disabilities Act, and provides program development services. It originates cross-cutting research, demonstration and evaluation initiatives with other components of ADD, ACF, HHS, and other governmental Departments; and manages discretionary grants and contracts and assists in monitoring and evaluating discretionary grants at the national level.

The Division plans for and implements experimental program services based on advice from state and local organizations on programs needs It formulates and prepares annual

demonstration and evaluation plans, coordinates and administers the University Affiliated Programs (UAP's) activities, and develops quality assurance criteria for the UAP Program.

The Division develops and initiates guidelines, policy issuances and actions with team participation by other components of ADD, ACF, HHS, and other governmental agencies to fulfill the mission and goals of the Developmental Disabilities Assistance and Bill of Rights Act, as amended. It ensures the dissemination of project results and information produced by ADD grantees.

The Division coordinates national program trends with other ACF programs and HHS agencies; and studies, reviews and analyzes other federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating programs.

KD.00 Mission. The Regional Offices of the Administration for Children and Families (ACF) are located at the ten DHHS regional office cities. They represent ACF to state, county, city or town and tribal governments, grantees, and public and private local organizations in the administration of programs in the region which assist vulnerable and dependent children and families achieve independence, stability, and self-reliance. These programs include: Aid to Families with Dependent Children (AFDC), Head Start, Child Support Enforcement (CSE), Job Opportunities and Basic Skills Training (JOBS), Foster Care, Child Welfare, and Adoption Assistance, Child Care, Runaway and Homeless Youth, Developmental Disabilities and Repatriation.

The ACF regional offices oversee the programmatic and financial management and coordination of the ACF programs in the region and provide guidance and assistance to the various entities responsible for administering these programs. They monitor the programs to ensure compliance with applicable laws and regulations, and adherence to program and fiscal policies and procedures. They contribute to the development of ACF national policy based on program knowledge and services in the region. The ACF regional offices review and approve state and tribal plans and, if warranted, take action to disapprove or recommend disapproval as appropriate. They issue grant awards directly for certain programs, and make recommendations to approve and/or disapprove grant awards for other programs. They advise the Assistant Secretary for Children and Families of problems and issues that may have significant regional or national impact. The ACF regional offices act as liaison with the entities responsible for administering the programs, other federal agencies, and public and private local organizations serving children and families. They develop plans to meet ACF goals and objectives and DHHS and agency initiatives. They participate in regional activities to inform the public about ACF programs in coordination with the ACF Office of Public Affairs and the Office of the Secretary at the regional level. The ACF regional offices work with states and counties to assist with the achievement of automated systems. They participate in special reviews relating to children and families.

KD.10 Organization. Each regional office is organized as follows:

Office of the Regional Administrator (KD1A–XA)
Office of Financial Operations (KD1B–XB)
Office of Family Security (KD1C–XC)
Office of Family Supportive Services (KD1D–XD)

KD.20 Functions. A. The Office of the Regional Administrator is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families. The Regional Administrator receives day-to-day operational guidance for the Deputy Assistant Secretary for Program Operations. In addition the Office of the Regional Administrator has a Deputy Regional Administrator who reports to the Regional Administrator. The Office provides executive leadership and direction to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The Office takes action to approve state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations, the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator, an administrative staff assists the Regional Administrator and Deputy Regional Administrator in providing day-to-day support for regional administrative functions, including budget, internal systems, employee relations, and human resource development activities. The Staff develops and implements the regional planning process. It tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives. The Staff coordinates public awareness activities, information dissemination and education campaigns in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director. It assists the Regional Administrator in management of cross-cutting initiatives and activities among the regional components, and ensures effective and efficient management of internal automation processes.

B. The Office of Financial Operations is headed by an Assistant Regional Administrator who reports to the Regional Administrator. The Office provides centralized management and technical administration of formula, entitlement, and discretionary grants for ACF programs in the region. It assists state, county, city or town, and tribal governments in the interpretation of federal financial management regulations, policies, guidelines and procedures, and ensures adherence to them. It establishes regional financial management priorities; and it reviews cost allocation plans. The Office represents the Regional Administrator to the ACF Office of Financial Management on all financial matters.

The Office provides financial management services for ACF formula, entitlement and discretionary grants in the region. It reviews cost estimates and reports for ACF entitlement and formula grant programs, and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to (1) approve, defer or disallow claims for federal financial participation in ACF formula and entitlement grant programs, and (2) approve or disallow costs under ACF discretionary grant programs. The Office

issues certain discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. As applicable, it makes recommendations on the clearance and closure of audits of state and grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies.

The Office oversees the management and coordination of office automation systems in the region and monitors state systems projects for ACF programs.

C. The Office of Family Security is headed by an Assistant Regional Administrator who reports to the Regional Administrator. The Office is responsible for providing centralized management and technical administration of certain ACF formula and entitlement programs, such as Aid to Families with Dependent Children (AFDC), Child Support Enforcement, Jobs Opportunities and Basic Skills Training (JOBS) and title IV–A Child Care. In that regard, the Office provides policy guidance to states to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. It reviews state plans and makes recommendations concerning state plan approval or disapproval to the Regional Administrator. It provides technical assistance to states to resolve identified problems, and monitors states to ensure that they adopt procedures and practices that increase the efficiency and effectiveness of these programs. It is responsible for managing all aspects of the AFDC quality control function. The Office represents the Regional Administrator in dealing with ACF Program Offices on all program policy matters under its jurisdiction. It alerts the Regional Administrator to problems or issues that may have significant implications for the programs.

D. The Office of Family Supportive Services is headed by an Assistant Regional Administrator who reports to the Regional Administrator. The Office is responsible for providing centralized management and technical administration of ACF formula, entitlement, block and discretionary programs, such as Head Start, Child Care and Development, Child Welfare Services, Foster Care and Adoption Assistance, Child Abuse and Neglect, Runaway and Homeless Youth, and Developmental Disabilities. In that regard, the Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements. It reviews state plans for child welfare services, foster care and adoption assistance programs, and makes recommendations concerning state plan approval or disapproval to the Regional Administrator. The Office provides technical assistance to entities responsible for administering these programs to ensure that appropriate procedures and practices are adopted, and monitors the programs to ensure their efficiency and effectiveness. The Office represents the Regional Administrator in dealing with ACF Program Offices on all program policy matters under its jurisdiction. It alerts the Regional Administrator to problems or issues that may have significant implications for the programs.

KE.00 Mission. The Administration for Native Americans (ANA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to American Indians, Alaskan Natives, Native American Pacific Islanders and Native Hawaiians, hereinafter referred to as Native Americans. ANA represents the concerns of Native Americans and serves as the focal point in the Department on the full range of developmental, social and economic strategies that support Native American self-determination and self-sufficiency.

ANA administers grant programs to eligible Indian tribes and Native American organizations in urban and rural areas with funds authorized under the Native American Programs Act of 1974, as amended.

In conjunction with the Office of the Assistant Secretary for Children and Families, ANA provides departmental liaison with other federal agencies on Native American affairs, working to promote social and economic self-sufficiency for Native Americans. In concert with other components of ACF, it develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of Native Americans. Through its policy, liaison, and programmatic grant functions, ANA explores new program concepts and new methods for increasing the social and economic development of Native Americans, ensures that information about departmental services and benefits and eligibility criteria is available to Native Americans, and fosters the opportunity for the exercise of self-determination by Native Americans and their operation of Native American programs and enterprises.

KE.10 Organization. The Administration for Native Americans is headed by the Commissioner who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KEA)
Intra-Departmental Council on Indian Affairs (KEB)
Planning and Support Staff (KEC)
East Division (KED)
West Division (KEE)

KE.20 Functions. A. The Office of the Commissioner provides executive direction and management strategy for all components of ANA. The Office serves as advisor to the Assistant Secretary for Children and Families, the Secretary, and the heads of DHHS agencies administering programs which have a significant impact on Native Americans. On behalf of the Department, the Commissioner conducts liaison with and obtains advice from Indian tribes and Native American organizations. The Commissioner provides policy direction and guidance to the ACF regional offices with respect to programs for urban Indians, off-reservation Indians, and other Native American projects in Hawaii and the Pacific Islands. The Deputy Commissioner acts as Commissioner in the absence of the Commissioner. The Commissioner is Chairman of the Intra-Departmental Council on Indian Affairs.

B. Intra-Departmental Council on Indian Affairs serves as the focal point within the Department for intra-agency coordination activities relating to Indian affairs to effect cooperation and complementary utilization of the Department's resources for Indian people. It promotes consistent policies on Indian affairs for the entire Department and promotes the full and continuous application of these policies throughout the Department. Staff to the Council provide support to the Commissioner of ANA, the Chairperson of the Council.

The Council identifies administrative, legislative and regulatory changes or developments necessary for the application of effective and consistent federal Indian policy.

C. Planning and Support Staff plans, coordinates, and controls ANA policy, planning, and management activities, and manages the development of regulations, policies, and guidelines for ANA. It develops and recommends the implementation of policies in coordination and consultation with the Office of Policy and Evaluation.

In coordination with the Office of Policy and Evaluation and the Office of

Financial Management in ACF, the Staff directs the development of program plans consistent with the Department's requirements. It formulates budget and legislative plans consistent with departmental and ANA requirements. It coordinates the reporting by ANA components to the ACF management information system, including reports on short-range initiatives.

The Staff manages the ANA program management information system to support ANA program reporting, planning, and administration; provides a wide range of management administrative services in support of all ANA programs and activities; and expedites the progress of all procurement and personnel actions.

The Staff serves as ANA Executive Secretariat, controlling the flow of correspondence. It is responsible for the receipt of Freedom of Information Act requests directed to ANA and coordinates responses to such requests; coordinates with appropriate ACF components in implementing administrative requirements and procedures; and oversees and administers the panel review process for grant applications within ANA.

D. West Division provides direct financial assistance to American Indian tribal governments, Native Hawaiian organizations, Native American Pacific Island organizations, urban Indian groups, rural off-reservation Native American groups, and other Native American groups and organizations, including national, regional, statewide, local, and inter-tribal consortia groups in the Western part of the U.S. The Division provides program direction for Region X and ANA grantees and coordinates programmatic activities with the Region. The Division serves as a resource for and liaison with Indian tribes and other Native American groups and organizations and as a link with projects of national significance, and carries out special projects and initiatives for the benefit of the ANA service population.

The Division provides information and program content for plans, budget information and policy development for activities authorized under the Native American Programs Act of 1974, as amended. In cooperation with the ANA Planning and Support Staff, it coordinates all matters pertaining to planning, overall ANA management, policy development and control, and program development.

E. East Division provides direct financial assistance to American Indian tribal governments, urban Indian groups, rural off-reservation Native American groups and other Native American groups and organizations, including national, regional, statewide, local, and inter-tribal consortia groups in the Eastern part of the U.S. It serves as a resource for and liaison with Indian tribes and other Native American groups and organizations and as a link with programs of national significance; and carries out special projects and initiatives for the benefit of the ANA service population.

The Division provides information and program content for plans, budget formulation and policy development for activities authorized under the Native American Programs Act of 1974, as amended. In cooperation with the ANA Planning and Support Staff, it coordinates all matters pertaining to planning, overall ANA management, policy development and control, and program development.

KF.00 Mission. The Office of Child Support Enforcement (OCSE) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to child support enforcement. The Office provides direction, guidance and oversight to states Child Support Enforcement (CSE) program offices and for activities authorized and directed by title IV–D of the Social Security Act and other pertinent legislation. The general purpose of the CSE legislation is to require states to develop programs for establishing and enforcing support obligations by locating absent parents, establishing paternity when necessary and obtaining child support.

The specific responsibilities of this Office are to: develop, recommend and issue policies, procedures and interpretations for state programs for locating absent parents, establishing paternity, and obtaining child support; develop procedures for review and approval or disapproval of state plan material; conduct complete audits of state programs at least once every three years to assure their conformity with appropriate requirements and to determine whether the actual operation of such programs conforms to federal requirements, and conduct other such audits as may be necessary; assist states in establishing adequate reporting procedures and maintaining records for the operation of the CSE programs and of amounts collected and disbursed under the CSE program and the costs incurred in collecting such amounts; provide assistance to the states to help them develop effective systems for establishing paternity and collecting child support; certify applications from states for permission to utilize the courts of the United States to enforce court orders for support against absent parents; operate the Federal Parent Locator Service; certify to the Secretary of the Treasury amounts of child support obligations that require collection in appropriate instances; submit an annual report to Congress on all activities undertaken relative to the CSE program; approve advanced data processing planning documents; and review, assess and inspect planning, design and operation of state management information systems.

KF.10 Organization. The Office of Child Support Enforcement is headed by a Director and consists of:

Office of the Director (KFA)
Division of Audit (KFB)
Division of Program Operations (KFC)
Division of Policy and Planning (KFD)

KF.20 Functions. A. Offices of the Director. The Director is also the Assistant Secretary for Children and Families and is directly responsible to the Secretary for carrying out OCSE's mission. The Deputy Director has day-to-day operational responsibility for Child Support Enforcement programs. The Associate Deputy Director for Information Systems, who is also the Director of the AFC Office of Information Systems/Child Support Systems, has responsibility for day-to-day management of child support information systems. The Deputy Director assists the Director in carrying out responsibilities of the Office and oversees day-to-day operation of OCSE's Audit, Program Operations, and Policy and Planning Divisions. The Associate Deputy Director assists the Deputy Director in carrying out the responsibilities of the Office.

The Office is responsible for developing regulations, guidance and standards for states to observe in locating absent parents; establishing paternity and support obligations and enforcing support obligations; maintaining relationships with Department officials, other federal departments, state and local officials, and private organizations and individuals interested in the CSE program; coordinating and planning child support enforcement activities to maximize program effectiveness; and approving all instructions, policies and publications issued by OCSE staff.

Within the Office of the Director, administrative staff assist the Director, Deputy Director and Associate Deputy Director in managing the formulation and execution of program and salaries and expense budgets; and in providing administrative, personnel and data processing support services. In coordination with ACF's Office of Public

Affairs, it plans, designs and executes OCSE's public affairs program by communicating information about policies, activities and available services to the public.

B. Division of Audit. As required by section 452(a)(4) of the Social Security Act (the Act), the Division of Audit develops, plans, schedules and conducts periodic audits of state CSE programs in accordance with audit standards promulgated by the Comptroller General of the United States.

The Division conducts Program Results and Performance Measurements audits pursuant to the penalty provision of section 403(h) of the Act to determine whether the actual operation of CSE programs in each state is effective and conforms to federal requirements; develops and conducts full-scope administrative cost audits of state Child Support Enforcement programs, as needed, to assess the adequacy of financial operations and compliance with applicable laws and regulations; performs other audits and examinations of program operations as may be necessary or requested by program officials for the purpose of improving the efficiency, effectiveness and economy of state and local child support activities; develops consolidated reports for the Director and Deputy Director of OCSE based on findings; provides specifications for the development of audit regulations and requirements for audits of state CSE programs; and coordinates and maintains effective liaison with the HHS Inspector General's Office and with the General Accounting Office (GAO).

C. Division of Program Operations assesses state performance and provides information and assistance on program operations. It monitors implementation of program requirements; develops guides and resource materials for use by states and ACF regional offices; documents specialized program techniques for use by states and local agencies; and ensures transfer of best practices among state and local support enforcement agencies. The Division provides specialized services and operation of the Federal Parent Locator Service, the Federal Tax Refund Offset Program and the Parental Kidnapping Service. It develops and publishes informational materials and operates an information clearing-house and training center on child support programs; and monitors contracts with organizations affiliated with child support programs.

D. Division of Policy and Planning proposes and implements national policy on the CSE program and provides policy guidance and interpretations to states in developing and operating their programs according to federal law. It develops legislative proposals and regulations to implement new legislation, court decisions or directives from higher authority. The Division develops procedures for review and approval of state plans by the OCSE regional offices. It develops and monitors research, interstate, and other demonstration and evaluation studies and publishes program statistics.

KG.00 Mission. The Office of Community Services (OSC) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to community programs to promote economic self-sufficiency. The Office is responsible for administering programs that serve low-income and needy individuals and address the overall goal of personal responsibility and achieving and maintaining self-sufficiency. It administers the Community Services Block Grant, Social Services Block Grant, and the Low Income Home Energy Assistance Block Grant programs. The Office administers the Family Violence Program. It administers a variety of discretionary grant programs that foster family stability, economic security, responsibility and self-support, promote and provide services to homeless and low-income individuals, and develop new and innovative approaches to reduce welfare dependency.

KG.10 Organization. The Office of Community Services is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KGA)
Division of State Assistance (KGB)
Division of Community Discretionary Programs (KGC)
Division of Community Demonstration Programs (KGD)
Division of Energy Assistance (KGE)

KG.20 Functions. A. Office of the Director provides executive direction and leadership to the Office of Community Services (OCS) and coordinates all elements of the Office. The Deputy Director assists the Director in carrying out the responsibilities of the Office. Within the Office, administrative staff assist the Director in managing the formulation and execution of program and salaries and expenses budgets, and in providing administrative, personnel and data processing support services.

B. Division of State Assistance administers the Community Services Block Grant (CSBG), Social Services Block Grant (SSBG), and the Emergency Community Services Homeless Grant Program (EHP). The Division also administers the Family Violence Program. It is responsible for developing, updating and implementing regulations and policies for these programs. It provides guidance, review, support and assistance to states and grantees on HHS policies, regulations, procedures and systems necessary to assure efficiency program operation at the state, territorial and tribal levels.

The Division is responsible for assessing compliance with the provisions of the CSBG and SSBG programs, reviewing and resolving formal complaints, reviewing and recommending approval or disapproval of waiver requests, and evaluating activities in the programs, as appropriate.

C. Division of Community Discretionary Programs administers a variety of discretionary grant programs that foster family stability, economic security, responsibility and self-support, and promote and provide services to low-income individuals. These programs are administered either through grants, contracts or jointly financed cooperative arrangements. Assistance may be provided to states, public and private non-profit organizations and community agencies to provide technical assistance, training and on-going services and activities of national, regional or state-wide significance. Assistance may also be provided to private, locally-initiated, non-profit community development corporations (or affiliates of such corporations). This assistance may be provided to address a variety of areas of interest, such as rural housing and community facilities, assistance to migrants and seasonal farm workers, recreational and educational activities for low-income youth, community food and nutrition, support programs for homeless individuals, job creation, and business development opportunities. The Division also administers continued-us-of-assets agreements between OCS and Community Development Corporations (CDCs).

D. Division of Community Demonstration Programs administers a variety of demonstration programs that develop new and innovative approaches to deal with the critical needs of the poor which are common to many communities, reduce welfare dependency, and create business and employment opportunities. These programs are administered either through grants, contracts or jointly financed cooperative arrangements. In coordination with the Office of Policy and Evaluation (OPE), the Division oversees and monitors these

demonstration programs; evaluates projects for their effectiveness in order to replicate those which are most successful; and prepares reports on significant findings.

E. Division of Energy Assistance administers the Low Income Home Energy Assistance program (LIHEAP) at the federal level. It develops guidelines, policies and regulations to provide direction to states, territories, Indian tribes and tribal organizations in administering LIHEAP. The Division calculates state allotments and develops statistical information regarding state plan characteristics, energy consumption, state median income estimates, fuel costs, and housing and demographic characteristics. It prepares, analyzes and recommends specific proposals for new legislation; prepares reports as required by Congress; and identifies and develops research and evaluation priorities and assesses the impact of research and evaluation findings and statistical data in terms of program directions.

The Division provides leadership in interpretation and application of federal program policy as it relates to compliance activities in the LIHEAP program. The Division reviews grantee applications and amendments; provides the ACF Office of Financial Management with information necessary to issue grants; and investigates complaints. In provides assistance to states, tribes and territories in developing energy program policies and operational procedures; evaluates compliance of state and tribal policies and operations with statutory and regulatory requirements; and provides support in developing and implementing program improvements. The Division assists states and other public and private organizations by providing training and technical assistance in areas related to home energy consumption.

KH.00 Mission. The Office of Family Assistance (OFA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to public assistance and economic self-sufficiency programs. The Office provides leadership, direction and technical guidance to the nationwide administration of the following programs: Aid to Families with Dependent Children (AFDC), Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands, the Emergency Assistance Program (EA), the Job Opportunities and Basic Skills Training Program (JOBS) and child care under title IV-A of the Social Security Act. OFA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. It develops and implements standards and policies for regulating integrated quality control activities of the Department and the operating Divisions. The Office provides technical assistance to states and assesses their performance in administering these programs, reviews state planning for administrative and operational improvements, and recommends actions to improve effectiveness. It directs reviews, provides consultations and conducts necessary negotiations to achieve adherence to federal law and regulations in state plans for public assistance program administration. It coordinates with ACYF on child care programs.

KH.10 Organization. The Office of Family Assistance is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KHA)
Division of AFDC Program (KHB)
Division of Quality Control (KHC)
Division of Program Evaluation (KHD)
Division of JOBS Program (KHE)

KH.20 Functions. A. Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out OFA's mission and providing direction, leadership, guidance and general supervision to the principal components of OFA. The Office is headed by the Director for Family Assistance. The Deputy Director assists the Director in carrying out the responsibilities of the Office. Within the Office of the Director, administrative staff assist the Director and Deputy Director in managing the formulation and execution of program and salaries and expense budgets and in providing administrative, personnel and data processing support services. Staff receive, control and coordinate replies to all public, congressional and federal inquiries on administrative and national welfare issues; and provide liaison with the Office of Public Affairs to promote ACF's public affairs programs and initiatives.

B. Division of AFDC Program provides direction and technical guidance in the nationwide administration of the Aid to Families with Dependent Children (AFDC) program. The Division proposes and implements national policy for the AFDC and Emergency Assistance (EA) programs under title IV-A of the Social Security Act, and the Aid to the Aged, Blind, and Disabled program in Guam, Puerto Rico and the Virgin Islands under titles I, X, and XIV of the Social Security Act. The Division develops regulations for these programs to implement new legislation, court decisions, or directives from ACF; consults with ACF regional offices, states, and other appropriate agencies on the meaning and application of federal policies for these programs; develops policy interpretations as necessary; and responds to public, congressional or interest group inquiries concerning OFA policies and procedures.

The Division reviews state plan amendments and proposed implementing instructions for adherence to national policy; takes actions on state plan amendments based upon recommendations from the ACF Regional Administrators; monitors state compliance with federal laws and regulations and recommends compliance actions to the ACF Office of Policy and Evaluation; and promotes cross-program policy initiatives and policy simplification to support ACF objectives.

The Division develops and recommends OFA legislative proposals and the OFA position on non-Administration legislative proposals; and prepares briefing materials and drafts testimony for the OFA Director, Assistant Secretary for Children and Families, or the Secretary.

The Division provides support to the Office of the General Counsel by developing the OFA position on court action, including the preparation of affidavits and compliance with discovery requests.

It evaluates quality control (QC) operating instructions to ensure consistency with program policies and advises the ACF regional offices on state appeals of QC difference findings; evaluates studies performed by federal audit agencies or other third parties and prepares comments which reflect the OFA perspective; ensures that all OFA policies are tracked and uniformly disseminated to states and other appropriate parties; and maintains historical files of OFA-related legislation, regulations and precedent policy directives. In addition, it reviews research and demonstration proposals for policy implications and provides consultation on operating projects.

C. Division of Quality Control develops policies, standards, procedures and guidelines for the operation of the federal/state AFDC quality control (QC) system, including statistical and programmatic aspects of the AFDC program; establishes, maintains and evaluates the effectiveness of the federal monitoring of the state quality

control operation, including technical and operating policies necessary to conduct federal subsample review of the states' sample case findings; and provides guidance and assistance to states and ACF regional offices on federal/state quality control procedures and systems. It conducts on-site reviews to appraise ACF regional office and state agency adherence to QC statistical methods and review procedures.

The Division coordinates the AFDC/QC system with the QC systems of the Food and Nutrition Service (FNS) and the Health Care Financing Administration (Medicaid), including coordination with these agencies on the National Integrated Quality Control Data Processing System (NIQCDPS).

The Division analyzes QC findings and consolidates state and federal findings; establishes states' official error rates and the amount of the corresponding disallowance as prescribed by statute and regulations; compiles QC findings into a national report based on data derived from the QC system; and assists in the corrective action process by providing data analysis, recommending corrective actions and reviewing state corrective action plans and progress reports.

D. Division of Program Evaluation develops research issues on OFA programs in response to ACF priorities and formulates research questions to be resolved through data analysis and/or experimental, research, pilot and demonstration projects; coordinates with ACF components to undertake research, evaluation, demonstration and pilot projects to strengthen ACF program interfaces and to reduce long-term welfare dependency; and maintains responsibility for OFA's annual research and demonstration project funding cycle and for monitoring of projects. It conducts program analyses and evaluation of AFDC and JOBS data, and other related data in support of ACF legislative proposals, congressional testimony and program initiatives; and promotes and disseminates information on useful and tested program practices.

The Division identifies issues and evaluates national program performance standards for determining the effectiveness of state and local agency public assistance program administration; collects, compiles and publishes statistical and other data on OFA programs; and maintains current and historical data on state plans and program characteristics.

E. Division of JOBS Program provides direction and technical guidance in the nationwide administration of the Job Opportunities and Basic Skills Training (JOBS) Program and child care programs under title IV–A of the Social Security Act. The Division proposes and implements national policy for JOBS and title IV–A child care, develops regulations to implement new legislation, and prepares policy interpretations as necessary. It coordinates with the Administration on Children, Youth and Families on child care issues. The Division develops and implements strategies to assist states, Indian tribes, and Alaska Native organizations in establishing, expanding, and/or improving their JOBS and child care programs. It provides oversight of technical assistance contracts, identification of successful practices, and information exchange through conferences, technology transfers, publications and resource networks. The Division monitors state compliance with federal laws and regulations, and promotes cross-program policy initiatives to support ACF objectives.

KP.00 Mission. The Office of Program Support advises and counsels the Assistant Secretary for Children and Families on all aspects of financial management and information resource management, except for child support enforcement state systems projects. The Director serves as the ACF Chief Financial Officer (CFO) and carries out, on behalf of the Assistant Secretary for Children and Families, the responsibilities assigned to ACF by the CFO Act of 1990 and the HHS CFO. The Office provides leadership to all ACF components on ensuring compatibility among programs and for coordination of cross-cutting initiatives. The Office develops, administers and coordinates financial and budgetary policies, processes, and controls necessary to administer ACF programs and financial resources. It directs discretionary and mandatory grant business activities, including grant awards, financial monitoring, resolution of audit findings, disallowances, and appeals.

KP.10 Organization. The Office of Program Support is headed by a Director who reports to the Assistant Secretary for Children and Families and consists of an Office of the Director (KPA).

KP.20 Functions. A. Office of the Director provides executive leadership and direction to the Office of Financial Management and the Office of Information Systems Management, except for Child Support Enforcement State Systems. It provides leadership for program coordination, budget, financial management and information management systems to all ACF components.

KJ.00 Mission. The Office of Information Systems Management (OISM)/Child Support Information Systems (CSIS) advises the Assistant Secretary for Children and Families on issues and policies pertaining to the utilization of information resources throughout ACF. The Office approves, monitors and provides technical assistance on automated systems projects for effective and efficient state operations. It oversees and directs ACF's information systems and communications network. The Office provides direction and technical guidance on state automated data processing projects used by state governments to operate the Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills Training (JOBS), Child Support Enforcement, Child Care, Child Welfare, Foster Care, and Refugee Resettlement Programs. It develops, recommends and issues policies, procedures and interpretations on information, computer and telecommunications technologies for all ACF program and staff offices and to the state agencies funded under pertinent titles of the Social Security Act. It establishes policy, requirements, standards and guidelines for information systems for the Department to support programs funded under the Social Security Act and information systems improvement initiatives (e.g., Income Eligibility Verification System-IEVS and Systematic Alien Verification for Entitlement-SAVE) involved in the administration and operation of federally funded programs. It directs and coordinates ACF's implementation of the requirements of the Paperwork Reduction Act of 1980 as amended, the Computer Security Act of 1987, and the Computer Matching and Privacy Act of 1988.

KJ.10 Organization. The Office of Information Systems Management (OISM)/Child Support Information Systems (CSIS) is headed by a Director who reports through the Director of Program Support to the Assistant Secretary for Children and Families, except for Child Support Enforcement State Information Systems. The Director also serves as the Associate Deputy Director of Child Support Enforcement and reports directly to the Director, Child Support Enforcement, on these matters. The Director will use the title of Director for Information Systems Management when signing official Child Support Enforcement documents. The Office is organized as follows:

Office of the Director (KJA)
IRM Policy and Management Staff (KJB)
Computer Center Staff (KJC)

State Systems Policy Staff (KJD)
Division of State Systems Approvals (KJE)
Division of Program Systems (KJF)
Division of Administrative Systems and Networks (KJG)
Division of Child Support Information Systems (KJH)

KJ.20 Functions. A. Office of the Director directs and coordinates all elements of the Office of Information Systems. The Office directs activities to plan, budget, manage, promote and control information resources and technology for AFDC, JOBS, Child Support Enforcement, Child Care, Head Start, Child Welfare, Foster Care, Refugee Resettlement, Social Services and Community Services programs and ACF internal operations. It manages a National Computer Center facility. It is responsible for approval of all State Information Systems Technology projects. It manages ACF's information resources management program in accordance with the Paperwork Reduction Act of 1980 as amended. It coordinates and tacks OMB reports clearance requirements and prepares reports required by the Paperwork Reduction Act. The Deputy Director assists the Director in carrying out the responsibilities of the Office. The Office provides management support for OISM and ensures coordination of operational activities among OISM components.

B. IRM Policy and Management Staff provides centralized Automated Data Processing (ADP) policy, procedures, standards and guidelines; develops long-range ADP plans; and develops the information resource management (IRM) policy, procurement plan and budget. It manages major IRM initiatives, including the Child Support Enforcement Network (CSENet). It conducts IRM reviews of ADP systems as required by the Department, and it reviews and analyzes all ADP acquisition documentation for compliance with applicable laws and regulations.

C. *Computer Center Staff* manages the National Computer Center facility which provides services to ACF components and authorized state and county computer users for all programs administered by ACF. It provides data communications and data exchanges with a variety of federal, state and county agencies using state-of-the-art computer systems technologies. It provides for the planning, procurement and implementation of computer center upgrades as appropriate to support ACF program initiatives.

D. State Systems Policy Staff is responsible for developing departmental policies and procedures under which states obtain federal financial participation in the cost of ADP systems to support programs funded under the Social Security Act. It acts as a central receiving point for, and coordinates for the Department review and approval of, state requests for federal funding of the cost of ADP systems acquisition; coordinates with other federal agencies on activities related to state automated systems, including Electronic Benefits Transfer; coordinates the provision of technical assistance to states on information systems projects; and advances the use of computer technology in the administration of welfare and social services programs by states.

The Staff is responsible for planning, designing, coordinating and implementing major departmental and government-wide information systems improvement initiatives (e.g., IEVS, SAVE, National Integrated Quality Control System) involved in the administration and operation of state programs funded by ACF. It serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity (IEVS), welfare systems integration and related initiatives and programs; provides leadership and guidance to interagency work groups in these areas for the Department; and directs and coordinates ACF's responsibilities under the Computer Security Act of 1987 and the Computer Matching and Privacy Act of 1988.

E. Division of State Systems Approvals reviews and analyzes state requests for federal financial participation for automated systems development activities which support the AFDC, JOBS, Child Care, Head Start, Child Welfare, Foster Care, Social Services and Refugee Resettlement programs. It provides assistance to states in developing or modifying automation plans to conform to federal requirements; recommends approval or disapproval of state funding requests. The Division monitors approved state systems development activities; conducts periodic reviews to assure state compliance with regulatory requirements applicable to automated systems supported by federal financial participation. It provides guidance to states on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems. It provides guidance to states on automated systems security and privacy protection and monitors state compliance with date utilization and safeguarding requirements.

F. Division of Program Systems oversees and coordinates computer systems design, development, maintenance and services to ACF programs. It provides technical assistance on automated systems to state and local agencies for the Federal Parent Locator Service, Federal Tax Refund Offset Service and Project 1099. It designs, develops and implements application systems to support ACF program reporting requirements for JOBS, Child Care, Head Start, Foster Care and Adoption, Child Abuse & Neglect, Social Services, Community Services, and Refugee Resettlement. The Division coordinates the design, development and implementation of the National Integrated Quality Control System with the Food and Nutrition Service of the Department of Agriculture and the Health Care Financing Administration.

G. Division of Administrative Systems and Networks designs, develops and implements application systems to support ACF administrative, budget and grants management monitoring and tracking systems. This includes discretionary grants tracking systems, legislative and policy retrieval systems, budget tracking systems, personnel action tracking systems, and others. It plans, manages, maintains and operates ACF's local area networks (LANs), national wide-area network (WAN) and personal computers. It develops and implements procurement strategies for major ADP acquisitions. It provides for equipment and software acquisition, maintenance and user support for end-user computing.

The Division plans, analyzes and responds to ACF-wide data communications needs; maintains an inventory of ADP software; and manages an information center offering services such as design assistance, application evaluation, user training, new product evaluation, and specialized technical assistance. It coordinates the review and updates of ACF's ADP Security Management Plan and enforces ADP directives to ensure compliance. It plans, designs, implements and maintains an ACF-wide corporate data base. It manages and maintains management information and executive information systems for all ACF components.

H. Division of Child Support Information Systems is a separate organizational unit which reports to the Associate Deputy Director for Child Support Information Systems, who reports to the Director of Child Support

Enforcement. The Division reviews and analyzes state requests for federal financial participation for automated systems development activities which support state and local Child Support Enforcement programs; provides assistance to states in developing or modifying automation plans to conform to federal requirements; and recommends approval or disapproval of state funding requests. It monitors approved state systems development activities; and conducts certification reviews to assure state compliance with regulatory requirements.

The Division provides guidance to states on functional requirements for automated information systems which support Child Support Enforcement programs. It promotes interstate transfer of existing automated systems by assisting states with identifying donor candidates for transfer, providing technical support to states during the transfer process and providing appropriate documentation of existing systems. It provides assistance and guidance to improve Child Support Enforcement programs through the use of automated systems. It provides guidance to states on automated systems security and privacy protection and monitors state compliance with data utilization and safeguarding requirements.

KK.00 Mission. The Office of Financial Management advises the Assistant Secretary for Children and Families on financial management matters. It provides leadership and direction on budget development and budget execution. It develops, administers and coordinates financial and budgetary policies, processes and controls necessary to administer ACF programs and financial resources. It directs formula, entitlement, block and discretionary grant business activity, including grant awards, financial monitoring, resolution of audit findings, disallowances and appeals.

KK.10 Organization. The Office of Financial Management (OFM) is headed by a Director who reports to the Director of Program Support and is organized as follows:

Office of the Director (KKA)
Financial and Grants Policy Staff (KKB)
Division of Budget and Finance (KKC)
Division of Formula, Entitlement, and Block Grants (KKD)
Division of Discretionary Grants (KKE)
Division of Audit Resolution and Grant Oversight (KKF)

KK.20 Functions. A. Office of the Director provides financial and grants policy and budgetary guidance to the Assistant Secretary for Children and Families and ACF program and staff components and has agency-wide responsibility for Section 4 of the Federal Managers' Financial Integrity Act (FMFIA). It serves as the ACF liaison with the Assistant Secretary for Management and Budget, the General Accounting Office, and the Office of Management and Budget for all financial, budgetary and grant matters. The Deputy Director assists the Director in carrying out the responsibilities of the Office. Within the Office of the Director, staff provide assistance to the Deputy and Deputy Director on the full range of their responsibilities. This includes the conduct of policy, administrative and coordination functions for the Office.

B. Financial and Grants Policy Staff develops regulations, action transmittals, and other policy guidance documents dealing with cross-cutting financial and grants policy issues; analyzes pending legislation and proposed program regulations to assess financial management and grants policy implications; provides expert guidance to OFM components, other ACF components, and grantees on financial management and grants policy issues; oversees and coordinates the application of financial management and grants policy throughout ACF; develops and keeps current ACF's Financial and Grants Management Manual; and advises the Director on financial and grants management goals and assists in developing grant-monitoring priorities.

C. Division of Budget and Finance is responsible for the formulation, presentation, and execution of ACF's program and administrative budgets. The Division provides guidance to ACF program and staff components in preparing material in support of budget formulation; and consolidates, formulates, and presents budget estimates and budget forecasts of resources relating to the direction and coordination of ACF financial resources. It represents ACF in budget negotiations and other finance-related dealings with the Department; assists in planning for and presenting the budget before OMB and the Congress; reviews appropriation statutes and recommends an overall ACF financial operating plan; prepares requests for apportionment of appropriated funds; and makes allotments and allowances within the approved operating plan.

The Division develops and maintains budgetary controls and procedures to ensure observance of established ceilings on both funds and personnel; and maintains commitment records against allowances and certifies funds availability as directed by the Assistant Secretary for Children and Families. It maintains control of allotted funds against current obligations; prepares spending reports and status of funds reports for the Assistant Secretary for Children and Families; analyzes usage of funds by program and staff offices and recommends changes to the operating plan based on these analyses; and provides analysis of and coordinates review and reconciliation of accounting reports for ACF.

In response to priorities of the Assistant Secretary for Children and Families, and with appropriate input from ACF program and staff components, the Division develops financial operating procedures and manuals, ensuring implementation within ACF (both headquarters and regions) of departmental and other federal budgetary and financial management regulations and guidelines by ACF components, and represents ACF on intra-departmental budget groups.

D. Division of Formula, Entitlement and Block Grants provides management and technical administration of ACF formula, entitlement and block grants. It assures that all formula, entitlement and block grants awarded by ACF conform with applicable statutes, regulations, and policies. The Division computes grantee allocations, prepares grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures. It analyzes financial needs under grant programs and provides data in support apportionment requests, and prepares reports and analyses on the grantee's use of funds.

The Division monitors receipt of and analyzes content of financial status reports and other financial reports and takes appropriate action based on those reports; processes actions for disallowances or other financial adjustments; and closes out expired grants. In coordination with ACF program and staff offices, the Division reviews and assesses ACF formula, entitlement, and block grant award procedures; directs and/or coordinates management initiatives to improve formula, entitlement, and block grant programs in financial areas; and develops proposals for improving the efficiency of awarding grants and coordinating financial operations among ACF programs. It maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF formula, entitlement and block grant activities and the Department's grant payment systems; and provides technical

assistance to ACF program and regional components on grant operations and technical grants management issues.

E. Division of Discretionary Grants provides management and technical administration of ACF discretionary grants and cooperative agreements. It serves as the principal office within ACF for ensuring that the business aspects of discretionary grants administration are carried out and monitors program and grantee performance in these areas; reviews program announcements for compliance with federal, departmental, and ACF regulations and guidelines; oversees the competitive review process and prepares ranking lists; negotiates grant budgets and special terms and conditions; prepares grant awards, ensuring incorporation of necessary grant terms and conditions; monitors grantee expenditure of funds; prepares reports and analyses on grantees' use of funds; monitors receipt of and analyzes content of financial status reports and other required reports and takes appropriate action based on those reports; processes actions for disallowances or other financial adjustments; reviews grantee financial management operations; and closes out expired grants.

In coordination with ACF program and staff offices, the Division reviews and assesses ACF discretionary grant award procedures; directs and/or coordinates management initiatives to improve discretionary grant programs in financial areas; develops proposals for improving the efficiency of awarding grants and coordinating financial operations among ACF programs; and develops procedures for financial monitoring and review activities for ACF discretionary grant programs. It maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF discretionary grant activities and the Department's grant payment systems.

F. Division of Audit Resolution and Grant Oversight oversees the implementation of established ACF, departmental and federal financial and grants management policies and guidelines. The Division oversees, monitors, and coordinates the resolution of audit findings and processes audit findings for certain ACF programs. The Division reviews, analyzes, and responds to program, regional offices and grantee requests for interpretation of financial and grants management policies and guidelines. The Division reviews, analyzes and prepares a recommended response for the Director or Assistant Secretary for Children and Families regarding regional or program office consultations regarding disallowances, suspensions or terminations. It provides analysis, supportive material, and recommends action on grantee requests for reconsideration of disallowances or other grant actions; analyzes audit findings and assigns action to the appropriate ACF official; monitors audit resolution activity to ensure compliance with OMB and Department resolution time frames; and reviews resolution actions to ensure compliance with ACF, departmental and other federal regulations, policies and guidelines.

The Division is responsible for monitoring debt collection activities and disposition of assets, and provides all claims (debts) collection activities of former Community Services Administration (CSA) grantees. It serves as the ACF liaison with GAO, HHS Audit Agency, and ASMB on grant matters; assists in grant hearings held by the Department Appeals Board or ACF components; and manages the departmental disallowance alerting system for ACF components.

KL.00 Mission. The Office of Management (OM) advises the Assistant Secretary for Children and Families in the broad areas of strategic planning, human resource management, organizational analysis, facilities and telecommunications management, and acquisition management. OM provides leadership and direction to ACF in such administrative and management activities as personnel, staff development, labor relations, support services, management analysis, internal controls, and organizational studies. It oversees the management initiatives of the Assistant Secretary for Children and Families, and it provides oversight on strategic planning efforts. It directs and coordinates services and support to meet ACF's space management, facilities services and voice telecommunications needs, and it provides centralized acquisition management services to ACF.

KL.10 Organization. The Office of Management is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations and is organized as follows:

Office of the Director (KLA)
Division of Human Resources (KLB)
Division of Planning (KLC)
Division of Management Analysis (KLD)
Division of Administrative Services (KLE)
Division of Acquisition Management (KLF)

KL.20 Functions. A. The Office of the Director provides leadership and direction to ACF in such administrative and management activities as personnel, staff development, labor relations, support services, management analysis, internal controls and management integrity, and organizational studies. It oversees the management initiatives of the Assistant Secretary for Children and Families. The Deputy Director assists the Director in carrying the responsibilities of the Office. The Office directs and coordinates all elements of the Office of Management.

B. Division of Human Resources provides oversight and direction to meet the human resource management needs of ACF components. The Division provides liaison between ACF components and the Office of the Assistant Secretary for Personnel Administration (ASPER) to provide personnel services including position management, staffing, recruitment, employee and labor relations, employee assistance, payroll, staff development and training, and special hiring and placement programs. It coordinates ACF's labor relations program, including coordination and liaison with ASPER on advice to ACF managers on labor relations issues and labor-management contract administration. It coordinates the ethics program with the Department's Office of Special Counsel for Ethics, and it manages ACF's ethics program and training requirements. It manages the performance recognition systems and the responsibilities of the Executive Resources Board (ERB), the Performance Review Board (PRB) and the Performance Standards Review Board. It manages and coordinates all awards programs for ACF. It maintains systems to track personnel actions and to keep ACF informed about the status of personnel actions, current FTE usage and S&E resources, and employee programs and benefits. It manages ACF's Personnel Security responsibilities.

C. Division of Planning provides oversight and guidance to ACF program and staff offices on strategic planning efforts. It is responsible for the development of short and long range planning initiatives within ACF, including planning and implementation related to the Secretary's Program Directions. It makes recommendations to and advises the Assistant Secretary for Children and Families on all planning matters including strategic planning; manages agency-wide planning systems for determining goals; develops planning guidance for the Assistant Secretary for Children and Families and provides guidance and technical assistance to ACF components

in developing operational plans; develops and implements systems to assess progress in implementing plans; and serves as the focal point for leadership and the coordinating of cross-component, intra- and inter-departmental initiatives which involve ACF programs.

D. Division of Management Analysis plans, organizes and conducts management studies, analyses and evaluations of administrative, management and organizational processes. It studies structural, functional and operational problems of interest to the Assistant Secretary for Children and Families. The Division acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; prepares functional statements and official organization charts; maintains official organizational files for ACF; and prepares formal program, administrative and personnel delegations of authority for the Assistant Secretary for Children and Families.

The Division develops, prepares, disseminates and maintains all personnel-related and administrative policies, procedures and manuals that affect ACF components. It provides assistance, training and guidance to ACF staff on establishing and maintaining office files and schedules for disposition of ACF records, and it designs, manages and maintains forms management systems for the Agency. It is responsible for ensuring Agency compliance with the requirements of the Privacy Act. It reviews advisory and assistance services contract proposals, makes recommendations to the Assistant Secretary for Children and Families on their disposition, and prepares required departmental reports.

The Division oversees and coordinates ACF's responsibilities under the Federal Managers' Financial Integrity Act (FMFIA). It is responsible for managing the FMFIA program for the Assistant Secretary for Children and Families and the Internal Control Officer.

E. Division of Administrative Services directs and coordinates services and support to meet ACF's administrative and support services, space management, facilities services and telecommunications needs. It develops and implements policies, standards, programs and procedures to assure adequate general services for ACF. The Division provides administrative and support services to ACF components. It provides centralized printing and distribution services to ACF. It manages and coordinates mail, messenger and labor services; controls and maintains equipment, supplies, and material inventories; manages equipment repair services, loan of audio-visual equipment and conference rooms; reviews, controls, monitors and tracks all small purchases; and it manages and coordinates property inventory and travel. It is responsible for updating telephone directories, staff and functional directories, directory boards, signs, security card keys and identification badges. It provides travel advice and assistance to the ACF components.

The Division develops and implements ACF's space and facilities management plans and activities, including identification and negotiations for office space, allocations of space, coordination of physical moves, and planning and design of office layouts. It coordinates with HHS and General Services Administration (GSA) outside vendors to provide facilities and equipment, building security, property management, health and safety programs, physical fitness and wellness programs, labor and repair services, facilities for employees with disabilities and parking.

In coordination with ACF components, the Division develops telecommunications plans and places orders for voice communications services; provides liaison with HHS, GSA and private firms on voice telecommunications matters; provides assistance to ACF components to identify needs for and use of voice telecommunications equipment and systems; monitors standard level user charges and voice telecommunications charges; and assists with budgetary projections and cost estimates for voice communications services.

F. Division of Acquisition Management provides centralized management and administration of acquisitions for ACF headquarters components. It assures that all contracts awarded conform with applicable statutes, regulations and policies. It develops ACF policies, procedures and instructions for the award and administration of all ACF acquisitions. It reviews proposed HHS and OMB regulations pertaining to contract management issues. It solicits, negotiates, modifies, terminates and closes all acquisitions issued for ACF.

The Division participates in developing and implementing procurement policy promulgated at federal and HHS levels. It reviews work statements, issues solicitations, negotiates contracts and modifications, performs cost-price analysis and pre- and post-award surveys, processes vouchers and monitors performance. It provides staff support, technical expertise and training to all ACF components in all phases of their procurement program. It provides technical advice and training to ACF program and staff officials on the implementation and scheduling of procurement programs. The Division conducts the Small Business Administration oversight program.

KM.00 Mission. The Office of Policy and Evaluation (OPE) recommends to and advises the Assistant Secretary for Children and Families on all policy and programmatic matters having substantial impact on program direction. It oversees policy, congressional and legislative affairs, manages the ACF regulatory, legislative, research, demonstration and evaluation agendas, and oversees special initiatives within ACF. The Office plans, develops and monitors strategies for promoting ACF policy; and analyzes the impact of programmatic alternatives, including the fiscal impact. It coordinates the development of priority areas for funding research and evaluation programs; and manages major and crosscutting research, demonstration and evaluation projects.

KM.10 Organization. The Office of Policy and Evaluation is headed by a Director who reports to the Deputy Assistant Secretary for Policy and External Affairs and consists of:

Office of the Director (KMA)
Division of Policy and Legislation (KMB)
Division of Research and Evaluation (KMC)

KM.20 Functions. A. Office of the Director provides direction and executive leadership to OPE in the administration of its responsibilities; serves as the advisor to the Assistant Secretary for Children and Families on all policy and program related matters; and, in concert with the Deputy Assistant Secretary for Policy and External Affairs, represents the Assistant Secretary to outside groups on policy and evaluation matters. The Deputy Director assists the Director in carrying out the responsibilities of the Office. Within the Office of the Director, a staff manages special projects and initiatives of priority concern to the Assistant Secretary for Children and Families and the Secretary.

B. Division of Policy and Legislation provides leadership in the development of policy and ensures consistency of policy among ACF program and staff offices, and with ACF and HHS goals. It reviews all policy, including legislative policy; manages the ACF legislative

planning cycle and the regulations process; and negotiates policy positions on all ACF legislative and regulatory policy matters within the Department and the Executive Branch.

The Division, in concert with the Deputy Assistant Secretary for Policy and External Affairs, serves as the focal point for congressional liaison in ACF; counsels and advises the Assistant Secretary for Children and Families and ACF senior staff on all aspects of congressional relations; manages the preparation of testimony and backup material for presentation before the Congress; monitors hearings and other congressional activities which affect ACF; manages requests for information from Congress; and serves as focal point for ACF with the Office of the Assistant Secretary for Legislation.

C. Division of Research and Evaluation provides guidance and oversight to ACF program components in the conduct of research and demonstration (R&D). The Division oversees the planning and management of ACF program discretionary resources; manages all phases of the Coordinated Discretionary Funds Program (CDP) for research, demonstration, evaluation, training and technical assistance funds; and advises the Assistant Secretary for Children and Families on research and demonstration issues.

In cooperation with ACF program components, the Division coordinates the development of priority area funding and research and demonstration planning guidance to be used by those components; reviews and recommends approval of R&D plans prepared by the program components; and prepares the annual ACF R&D plan. It reviews all ACF unsolicited proposals; oversees the awards process; ensures the compliance of all grant awards with the discretionary plan; and tracks overall progress of funded projects. It develops and manages crosscutting and major research and demonstration initiatives of interest to the Assistant Secretary for Children and Families, disseminates projects results and ensures the transfer of technologies and best practices of research and demonstration projects. The Division manages the Small Business Innovation Research (SBIR) program.

The Division provides national leadership and expertise for the human services field through the application of evaluation methods to a wide range of policy success indicators, including socio-demographic characteristics, social services allocations, client population targeting and program cost-effectiveness. The Division develops the ACF evaluation plan and coordinates ACF evaluation activities with other federal agencies and monitors program evaluation activities. It develops and manages crosscutting and major evaluation initiatives of interest to the Assistant Secretary for Children and Families and disseminates project results.

KN.00 Mission. The Office of Public Affairs (OPA) develops, directs and coordinates public affairs and communication services for ACF. In concert with the Deputy Assistant Secretary for Policy and External Affairs, it provides leadership, direction and oversight in promoting ACF's public affairs policies, programs and initiatives.

KN.10 Organization. The Office of Public Affairs is headed by a Director who reports to the Deputy Assistant Secretary for Policy and External Affairs and consists of:

Office of the Director (KNA)
Division of Public Information (KNB)
Division of Publications Services (KNC)
Division of Intergovernmental Affairs (KND)

KN.20 Functions. A. Office of Director provides leadership and direction to OPA in administering its responsibilities. The Office provides direction and leadership in the areas of public relations policy and communications services. It serves as advisor to the Assistant Secretary for Children and Families in the areas of public affairs; provides advice on strategies and approaches to be used to improve public understanding of and access to ACF programs and policies; and coordinates and serves as ACF liaison with the Assistant Secretary for Public Affairs. The Officer serves as Regional Liaison on public affairs issues. The Deputy Director assists the Director in carrying out the responsibilities of the Office.

B. Division of Public Information develops and implements public affairs strategies to achieve ACF program objectives in coordination with other ACF components. It coordinates news media relations strategy; responds to all media inquiries concerning ACF programs and related issues; develops fact sheets, news releases, feature articles for magazines and other publications on ACF programs and initiatives; and manages preparation and clearance of speeches and official statements on ACF programs. It coordinates regional public affairs policies and public affairs activities pertaining to ACF programs and initiatives.

C. Division of Publications Services directs the audio-visual and publication management system for ACF. It manages preparation and clearance of all ACF audio-visual products, publications, and graphic designs, including planning, budget oversight and technical support. It provides centralized graphics design services to ACF. It reviews requests for proposals for contracts and grants which involve publications, audio-visual materials and/or public information and education activity.

D. Division of Intergovernmental Affairs serves as the focal point for intergovernmental coordination activities with other federal agencies, state and local officials, special interest groups, professional and business organizations, and private and voluntary groups. It tracks plans, proposals, legislative positions, conferences and other activities of outside groups that influence or affect ACF's programs and policies. It responds to requests for information from outside groups on ACF's programs and positions. It plans, organizes and coordinates conferences, workshops and other events to promote ACF's programs and priorities, and it coordinates ACF's participation at meetings and conferences sponsored by outside groups. It manages the speaker request system. It provides advance planning and preparation for trips by the Assistant Secretary, Principal Deputy Assistant Secretary, and Deputy Assistant Secretaries for ACF including speaking engagements; and monitors reports by news media outlets and provides appropriate summaries to ACF components. It also serves as the Emergency Preparedness Office for ACF.

KR.00 Mission. The Office of Refugee Resettlement (ORR) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to refugee resettlement and repatriation. The Office plans, develops and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. It develops, recommends, and issues program policies, procedures and interpretations to provide program direction. The Office monitors and evaluates the performance of states and other public and private agencies in administering these programs and supports actions to improve them. It provides leadership and direction in the development and coordination of national public and private programs that provide assistance to refugees and entrants.

The Office also plans, develops and directs implementation of state legalization impact assistance grants. It develops, recommends and issues

policies, procedures and interpretations and monitors grant activities. The Office provides direction and technical guidance on the nationwide administration of the U.S. Repatriate and State Legalization Impact Assistance Grants programs.

KR.10 Organization. The Office of Refugee Resettlement is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KRA)
Division of Operations (KRB)
Division of Policy and Analysis (KRC)
Division of State Legalization and Repatriation (KRD)

KR.20 Functions. A. Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out ORR's mission and providing direction, leadership, guidance and general supervision to the components of ORR. The Deputy Director assists the Director in carrying out the responsibilities of the Office. Within the Office of the Director, administrative staff assist the Director and Deputy Director in managing the formulation of program and salaries and expenses budgets; and in providing administrative, personnel and data processing support services.

The Office coordinates with the lead refugee and entrant program offices of other federal departments; provides leadership in representing refugee and entrant programs, policies and administration to a variety of governmental entities; acts as the coordinator of the total refugee and entrant resettlement effort for ACF and the Department; and coordinates and provides leadership for policies and administration of the legalization assistance grants to a wide variety of public and private interests.

The Office also provides information and referral services, consistent with available resources, to refugees and entrants, service providers and state and federal agencies in the state of Florida. It maintains data on refugees and Cuban and Haitian entrants and provides such information as needed to national, state and local agencies working with these populations. The Office coordinates state and local resettlement activities to ensure compliance with resettlement policy; serves as the ORR contact with state and local officials and public and private agencies involved with refugee resettlement activities; and carries out refugee and entrant program duties and responsibilities with respect to the state of Florida.

B. The Division of Operations provides direction for the operation and implementation of the ORR refugee and entrant domestic assistance programs. It monitors state-administered domestic assistance programs and develops guidance and procedures for their implementation; designs strategies for providing assistance to state and local agencies, refugee and entrant self-help groups and voluntary agencies; recommends to the Director service priorities to be initiated as demonstration or pilot projects designed to promote the self-sufficiency and social and economic integration of refugees and entrants; and oversees the programmatic implementation of grants and contracts associated with national discretionary activity.

The Division has responsibility for implementing and monitoring other domestic assistance and service initiatives undertaken by ORR, such as the voluntary agency program, targeted assistance, alternative resettlement strategies and other activities as specified by the Director or required by congressional mandate.

C. Division of Policy and Analysis directs the development and interpretation of policy and regulations for the refugee and entrant programs. It develops priorities among various types of refugee and entrant assistance services taking into consideration funding availability, predicted effectiveness of options and emergent needs of new refugees. In accomplishing these tasks, it assures adequate involvement, comment and review from a variety of interested and knowledgeable parties.

The Division develops goals, criteria and standards for the refugee and entrant programs and designs evaluations of the technical aspects of program implementation. Based on reviews, analyses, assessments and evaluations, it makes recommendations on changes in program policy, operations and administration.

The Division collects data and performs analyses on the changing needs of the refugee and entrant population, providing direction in the design of needs assessments conducted by itself or other entities. The Division provides leadership to identify data needs and sources, formulates data and reporting requirements; and assists states and private agencies on data reporting and the resolution of reporting problems. It assures that legislative requirements are defined and met and seeks legal interpretation where such requirements or intent may be unclear. The Division makes recommendations concerning aspects of legislation that require amendment; prepares reports required by statute, congressional requests, and Department needs; and prepares legislative, regulatorv, operational and policy recommendations based on program analysis.

D. Division of State Legalization and Repatriation directs all aspects of the U.S. Repatriate and the State Legalization Impact Assistance Grants programs, including development and interpretation of policy and regulations, coordination and direction of initiatives involving the use of federal funds, and preparation of reports to Congress.

The Division operates both ongoing and Emergency Repatriation programs to assist U.S. citizens and dependents who return to the United States from foreign countries. It is responsible for developing the Department's portions of the National Emergency Repatriation Plan. The Division assures that grantee expenditures are in accordance with federal rules and that loans made to repatriates are repaid as required.

The Division serves as the focal point within the Department for issues related to legalization assistance grants, including monitoring and grant review activities, and the collection and analysis of data relevant to the allocation formula and the use of funds.

K.30 Delegations of Authority

A. Except as provided in this section the Assistant Secretary for the Administration for Children and Families is delegated the following authorities by the Secretary:

I. Delegations of Authority for Social Security Act Programs

(a) *Authorities Delegated.* 1. Authority to administer the provisions of the Adult Assistance (AA) Programs under titles I, X, XIV and XVI (Grants to States for Aid to the Aged, Blind and Disabled) of the Social Security Act, and as amended now and hereafter.

2. Authority to administer the provisions of the Aid to Families with Dependent Children (AFDC) Program, Emergency Assistance Program, Job Opportunities and Basic Skills Training Program, At-Risk Child Care Program, AFDC Child Care Program, Transitional Child Care Program and Child Care Licensing, Enforcement and Training Improvement Grant Program under title IV–A of the Social Security Act, and as amended now and hereafter.

3. Authority to administer the Child Welfare Services Program, including the State Grant Program, the Research and Demonstration Program and the Training Program pursuant to title IV–B

of the Social Security Act, and as amended now and hereafter.

4. Authority to administer the provisions of the Child Support and Establishment of Paternity Program under title IV–D of the Social Security Act, and as amended now and hereafter.

5. Authority to administer the Foster Care Program and Adoption Assistance programs including the Independent Living Initiative under title IV–E of the Social Security Act, and as amended now and hereafter.

6. Authority to administer the Job Opportunities and Basic Skills Training Program under title IV–F of the Social Security Act, and as amended now and hereafter.

7. Authority under the provisions of title XI, section 1102 of the Social Security Act, and as amended now and hereafter, to make determinations on State appeals concerning audit questions or recommendations by the Department of Health and Human Services (HHS) Office of Inspector General which involve State AFDC/AA practices reviewed under titles I, IV–A, X, XIV and XVI of the Act. The Assistant Secretary for Children and Families retains final authority to allow/disallow Federal financial participation in State expenditures questioned by the General Accounting Office, the HHS Office of Inspector General, or Administration for Children and Families officials.

8. Authority to administer limitations on payments to Puerto Rico, Virgin Islands, Guam, and American Samoa under the provisions of title XI, section 1108 of the Social Security Act, and as amended now and hereafter.

9. Authority to administer Cooperative Research or Demonstration Projects, as they pertain to the Administration for Children and Families programs, under the provisions of title XI, section 1110 of the Social Security Act, and as amended now and hereafter.

10. Authority to administer Experimental, Pilot or Demonstration Projects, as they pertain to the Administration for Children and Families programs, under the provisions of title XI, section 1115 of the Social Security Act, and as amended now and hereafter.

11. Authority to hold hearings and make decisions on State requests for reconsideration of disapproved State AFDC/AA plans or plan amendments, as they pertain to the Administration for Children and Families programs, under title XI, section 1116 (a) and (b) of the Social Security Act, and as amended now and hereafter.

12. Authority to administer Income and Eligibility Verification Systems, as they pertain to the Administration for Children and Families programs, under the provisions of title XI, section 1137 of the Social Security Act, and as amended now and hereafter.

13. Authority to administer the Social Services Block Grant program under the provisions of title XX of the Social Security Act, and as amended now and hereafter.

(b) *Limitations.* 1. The Assistant Secretary may not redelegate the authority, under section 1116 (a) and (b) of the Act, to hold hearings and make decisions on State requests for reconsideration of disapproved State AFDC/AA plans or plan amendments.

2. Where all or any part of an experimental, pilot, research or demonstration project is wholly financed with Federal funds made available under section 455(e), 1110 or 1115 of the Act, without any State, local, or other non-Federal financial participation, that project must be approved by the Secretary of Health and Human Services.

3. No final decision that the audit penalty provisions of section 403(h) of the Social Security Act will be imposed or a determination of the amount of such penalty without prior consultation with the Secretary.

4. This delegation excludes the authority to establish a Quality Control Review Panel and to resolve difference cases under section 408(b) (4) and (5) of the Act.

(c) *Effect on Existing Delegations.* These delegations supersede the delegations for the Aid to Families with Dependent Children and Adult Assistance Programs in the memorandum dated October 29, 1986, "Delegation of Authority for the Office of Family Assistance"; the memorandum dated February 4, 1985, "Delegation of Authority for the Office of Child Support Enforcement"; the authorities published in the **Federal Register** dated September 29, 1980, paragraph D.30, Delegations of Authority, subparagraphs (a) 12 and 13; and the memorandum dated November 23, 1981, "Delegation of Authority Regarding the Maternal and Child Health Services Block Grant."

II. Delegations of Authority for Title XI of the Social Security Act

(a) *Authorities Delegated.* 1. Authority under Section 1119 of the Social Security Act, and as amended now and hereafter, to approve Federal financial participation in payments for repairs to homes owned by recipients of aid or assistance.

2. Authority to waive the requirement imposed under Section 1132 of the Social Security Act of the two-year period for the filing of any claim arising under titles I, IV–A, X, XIV, XVI, and XX if the Assistant Secretary determines (in accordance with regulations) that there was good cause for failure by the State to file such claim within this time period.

(b) *Limitations.* The authority in paragraph 2 may not be redelegated.

III. Delegations of Authority for the Family Support Act of 1988, Pub. L. 100–485

(a) *Authorities Delegated.* 1. Authority to conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State, under section 101(c) of the Family Support Act, and as amended now and hereafter.

2. Authority to conduct a study to determine the impact on child support awards and the courts of requiring each State to periodically review all child support orders in effect in the State, under section 103(d) of the Family Support Act, and as amended now and hereafter.

3. Authority to administer and implement demonstration projects for evaluating model procedures for reviewing child support awards, under section 103(e) of the Family Support Act, and as amended now and hereafter.

4. Authority to collect data necessary to implement section 452(g) of the Act and to determine the appropriate period for computing baseline data under section 111(f) of the Family Support Act, and as amended now and hereafter.

5. Authority to conduct a study, by grant or contract, of child-rearing costs, under section 128 of the Family Support Act, and as amended now and hereafter.

6. Authority to enter into a contract or agreement with the National Academy of Sciences to study a new national system of welfare benefits for low-income families with children, under section 406 of the Family Support Act, and as amended now and hereafter.

7. Authority to administer demonstration projects under title V of the Family Support Act, and as amended now and hereafter, (excluding Section 507 of the Family Support Act).

8. Authority to enter into agreement with the Secretary of Labor for the purpose of providing HHS with prompt access to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies, under section 453(e) of the Act, and as amended now and hereafter.

IV. Delegations of Authority for the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Public Law 101-508

(a) *Authorities Delegated.* 1. Authority to enter into an agreement with the State of Texas, with respect to a project based in Bexar County of delinquency monitoring for child support enforcement pursuant to section 5013 of OBRA 1990 and as amended now and hereafter.

2. Authority for the Child Care and Development Block Grants under section 5082 of OBRA 1990, and as amended now and hereafter.

V. Delegation of Authority for the Demonstration Partnership Program

(a) *Authority Delegated.* Authority for Demonstration Partnership Agreements Addressing the Needs of the Poor under Section 408 of the Human Services Reauthorization Act of 1986 (Pub. L. 99-425), and as amended now and hereafter.

VI. Delegations of Authority for the Stewart B. McKinney Homeless Assistance Programs

(a) *Authorities Delegated.* 1. Authorities under sections 751 and 761 of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11461, Public Law 100-77, and as amended now and hereafter.

2. Authorities under section 903 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, 42 U.S.C. 11381, Public Law 100-628, and as amended now and hereafter.

(b) *Effect on Existing Delegation.* The delegation above related to section 761 of the Stewart B. McKinney Homeless Assistance Act supersedes the delegation contained in the memorandum dated September 5, 1989, "Delegation of Authority for Section 761 of the Stewart B. McKinney Homeless Assistance Act, P.L. 100-77."

VII. Delegation of Authority to Waive Single State Agency Requirement

(a) *Authority Delegated.* Authority, under section 204 of the Intergovernmental Cooperation Act of 1968, and as amended now and hereafter, to approve or disapprove requests from state Governors, or other duly constituted state authorities, for waiver of single state agency requirements when such requests are related to programs administered by the Administration for Children and Families.

VIII. Delegations of Authority for Child Abuse Prevention and Treatment, Adoption Opportunities, Child Abuse Studies, and Temporary Child Care for Handicapped Children and Crisis Nurseries

(a) *Authorities Delegated.* 1. Authority to administer the provisions of the Child Abuse Prevention and Treatment Act of 1974, 42 U.S.C. 5101 *et seq.*, and as amended, now and hereafter;

2. Authority to administer the provisions of the Adoption Opportunities Program under Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, 42 U.S.C. 5111-5115, and as amended, now and hereafter;

3. Authority to administer the provisions of the Temporary Child Care for Children with Disabilities and Crisis Nurseries Act, 42 U.S.C. 5117, and as amended, now and hereafter.

(b) *Effect on Existing Delegations.* These delegations supersede Memorandum dated September 30, 1978, "Delegation of Authority to Administer the Provisions of the Child Abuse Prevention and Treatment Act of 1974", as amended, and the Provisions of the Adoption Opportunities Program, under title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978; and Memorandum dated September 5, 1989, "Delegation of Authority for Sections 201-207 of the Temporary Child Care for Handicapped Children and Crisis Nurseries Act, Public Law 99-401, as amended by Public Law 100-403."

IX. Delegations of Authority for the Head Start Program, Head Start Transitional Projects, Child Development Associate Scholarship Assistance Grants Program, Comprehensive Child Development Centers Program, and Appalachian Regional Development Program

(a) *Authorities Delegated.* 1. Authority to administer the Head Start Program under the Head Start Act, 42 U.S.C. 9801 *et seq.*, and as amended, now and hereafter;

2. Authority to administer the provisions of the Head Start Transitional Projects Act, 42 U.S.C. 9855 *et seq.*, and as amended, now and hereafter.

3. Authority to administer the provisions of The Child Development Associate Scholarship Assistance Act, 42 U.S.C. 10901-10905, and as amended, now and hereafter;

4. Authority to administer the provisions of The Comprehensive Child Development Centers Act, 42 U.S.C. 9881 *et seq.*, and as amended, now and hereafter; and

5. Authority to administer section 202 of the Appalachian Regional Development Act, 40 U.S.C. App. 202, and as amended, now and hereafter.

(b) *Effect on Existing Delegations.* These delegations supersede Memorandum dated July 17, 1975, "Delegation of Authority to Administer the Head Start Program and the Day Care Projects Program Pursuant to title V, part A and part C of the Economic Opportunity Act of 1964, as amended by the Headstart, Economic Opportunity, and Community Partnership Act of 1974;" Memorandum dated September 5, 1989, "Delegation of Authority for the Child Development Associate Scholarship Assistance Act, Sections 601-605 of Title VI of the Human Services Reauthorization Act of 1985, Public Law 99-425;" Memorandum dated September 5, 1989, "Delegation of Authority for The Comprehensive Child Development Centers Act Subchapter E Sections 670M-670S of the Omnibus Elementary and Secondary Education Act of 1988, Public Law 100-297;" and the authorities as published in the **Federal Register**, Monday, September 29, 1980, paragraph D. 30 Delegations of Authority, subparagraphs (a)16.

X. Delegations of Authority To Conduct a Study of the Independent Living Initiative

(a) *Authorities Delegated.* 1. Authority to conduct a Study of the Independent Living Initiative under section 8002(d) of the Omnibus Budget Reconciliation Act of 1989, 42 U.S.C. 677 note, and as amended now and hereafter.

XI. Delegations of Authority for the Native American Program and the Feasibility Study for the Establishment of a National Center for Native American Studies and Policy Development

(a) *Authorities Delegated.* 1. Authority to administer the Native American Program pursuant to the Native American Programs Act of 1974, 42 U.S.C. 2991 *et seq.*, and as amended, now and hereafter; and

2. Authority to conduct a feasibility study for the establishment of a National Center for Native American Studies and Policy Development, as provided under section 11 of Public Law 101-301.

(b) *Effect on Existing Delegations.* These delegations supersede the authorities as published in the **Federal Register** dated Monday, September 29, 1980, paragraph D. 30 Delegations of Authority, subparagraph (a)9.

XII. Delegations of Authority for Repatriation Programs

(a) *Authorities Delegated.* 1. Authorities under section 1113 of the Social Security Act, and as amended now and hereafter, to administer the program of temporary assistance to certain U.S. citizens and their dependents repatriated from foreign countries.

2. Authorities under Public Law 86-571 to administer the program of hospitalization and other care, treatment, and assistance for certain U.S. nationals repatriated from foreign countries due to mental illness or insanity.

(b) *Effect on Existing Delegations.* These delegations supersede the delegation of authorities for the Repatriate Programs contained in the memorandum dated October 29, 1986, "Delegation of Authority for the Office of Family Assistance."

XIII. Delegations of Authority for Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35)

(a) *Authorities Delegated.* 1. Authorities to administer the block grant, transition grant and discretionary grant programs under the provisions of sections 671-683 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), and as amended now and hereafter.

2. Authority to take administrative actions necessary to close out the programmatic activities of the Community Services Administration.

3. Authority to administer the provisions of Subchapter D—Grants for Planning and Development of Dependent Care Programs and for other purposes (Chapter 8, title VI of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, 42 U.S.C. 9871 *et seq.*) and as amended now and hereafter.

(b) *Effect on Existing Delegations.* These delegations of authority supersede the delegations for the Community Service Programs contained in the memorandum dated October 29, 1986, "Delegation of Authority for the Office of Community Services," and the memorandum dated April 30, 1986, "Delegation of Authority to Administer the Provisions of Subchapter D—Grants to States for Planning and Development of Dependent Care Programs and for other Purposes (Chapter 8 of title VI of the Omnibus Budget Reconciliation Act of 1981)."

XIV. Delegation of Authority for the Low Income Home Energy Assistance Program

(a) *Authority Delegated.* Authority to administer the Low Income Home Energy Assistance Program under the provisions of sections 2601-2610 of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, (42 U.S.C. 8621) and as amended now and hereafter.

(b) *Effect on Existing Delegations.* This delegation of authority supersedes the delegations for the Low Income Home Energy Assistance Program contained in the memorandum dated October 29, 1986, "Delegation of Authority for the Office of Family Assistance."

XV. Delegations of Authority for Refugee Resettlement Programs

(a) *Authorities Delegated.* 1. Authorities contained in Executive Order Number 12341 dated January 21, 1982.

2. Authorities for Cuban/Haitian entrant activities contained in sections 501 (a) and (b) of the Refugee Education Assistance Act, and as amended now and hereafter.

3. Authorities under 8 U.S.C. 1552e(7)(A) to develop and implement alternative projects for refugees who have been in the United States less than thirty-six (36) months.

(b) *Effect on Existing Delegation.* These delegations supersede the delegations for the Refugee Resettlement Program contained in the memorandum dated October 29, 1986, "Delegation of Authority for the Office of Refugee Resettlement."

XVI. Delegation of Authority for State Legalization Impact Assistance Grants

(a) *Authority Delegated.* Authority to administer State Legalization Impact Assistance Grants (SLIAG) under the provisions of section 204 of the Immigration Reform and Control Act of 1986, Public Law 99-603, and as amended now and hereafter.

(b) *Effect on Existing Delegations.* This delegation of authority supersedes the delegation contained in the memorandum dated July 17, 1987, "Delegation of Authority for section 204 of the Immigration Reform Control Act, Public Law 99-603."

XVII. Delegation of Authority for the Systematic Alien Verification for Entitlements (SAVE) Program

(a) *Authority Delegated.* Authority to approve or disapprove state requests for waivers from participation in the Systematic Alien Verification for Entitlements (SAVE) program under section 121(c)(4) of the Immigration Reform and Control Act, Public Law 99-603, and as amended now and hereafter.

(b) *Limitations.* This delegation is subject to the Health Care Financing Administration's staff input into the final decision on state waiver requests as well as concurrence in the final decision ultimately signed and issued by the Assistant Secretary for Children and Families.

(c) *Effect on Existing Delegations.* This delegation of authority supersedes the delegations contained in the memorandum dated July 17, 1987, "Delegation of Authority for section 121(c)(4) of the Immigration Reform and Control Act, Public Law 99-603."

XVIII. Delegation of Authority for Family Violence Prevention and Services Program

(a) *Authority Delegated.* Authority to administer the provisions of The Family Violence Prevention and Services Act, 42 U.S.C. 10401 *et seq.*, and as amended, now and hereafter.

(b) *Limitations.* Responsibilities under this Act are to be carried out in accordance with requirements of section 307 of the Act. The Office of Civil Rights has been delegated enforcement authority under Section 307.

(c) *Effect on Existing Delegations.* This delegation supersedes Memorandum dated April 30, 1986, "Delegation of Authority to Administer the Provisions of title III of Public Law 98-457, The Family Violence Prevention and Services Act."

XIX. Delegation of Authority for Children's Bureau, Adoption Information Clearinghouse and Abandoned Infants Assistance

(a) *Authorities Delegated.* 1. Authorities and functions vested in the Secretary under the Organic Act of the Children's Bureau (Act of April 9, 1912), 42 U.S.C. 191, *et seq.*, and as amended, now and hereafter;

2. Authorities which provide for the establishment of A National Adoption Information Clearinghouse under section 9442 of the Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 679a, and as amended, now and hereafter; and

3. Authorities to administer the Abandoned Infants Assistance Act of 1988, 42 U.S.C. 42 U.S.C. 670 note, and as amended, now and hereafter.

(b) *Effect on Existing Delegations.* These delegations supersede Memorandum dated June 15, 1973, "Delegation of Authorities vested in the Secretary under the Organic Act of the Children's Bureau (Act of April 9, 1912)";

Memorandum dated September 5, 1989, "Delegation of Authority for section 9442 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509"; and Memorandum dated September 5, 1989, "Delegation of Authority for the Abandoned Infants Assistance Act of 1988, Public Law 100–505."

XX. Delegation of Authority for the Developmental Disabilities Program

(a) *Authority Delegated.* Authority to administer the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 *et seq.*, and as amended, now and hereafter.

(b) *Effect on Existing Delegations.* This delegation supersedes the authorities as published in the **Federal Register** dated Monday, September 29, 1980, paragraph D. 30 Delegations of Authority, Subparagraphs (a) 17.

XXI. Delegation of Authority for the Runaway and Homeless Youth Program, Drug Abuse Education and Prevention Programs Relating to Youth Gangs, and Runaways and Homeless Youth

(a) *Authorities Delegated.* 1. Authority to administer the Runaway and Homeless Youth Program under the Runaway and Homeless Youth Act 42 U.S.C. 5701, *et seq.*, and as amended, now and hereafter;

2. Authorities to administer the Drug Abuse Education and Prevention Program Relating to Youth Gangs under sections 3501–3505 of the Anti-Drug Abuse Act of 1988, 42 U.S.C. 11801–11805, and as amended, now and hereafter; and

3. Authorities to administer the Drug Abuse Education and Prevention Program Relating to Runaways and Homeless Youth under sections 3511–3515 of the Anti-Drug Abuse Act of 1988, 42 U.S.C. 11821–11825, and as amended, now and hereafter.

(b) *Effect on Existing Delegations.* These delegations supersede Memorandum dated June 2, 1975, "Delegation of Authority for Public Law 93–415, title III, the Runaway Youth Act"; and Memoranda dated September 5, 1989, "Delegation of Authority for Chapter 1, Sections 3501–3505 of Title III of the Anti-Drug Abuse Act of 1988, Public Law 100–690"; "Delegation of Authority for Chapter 2, Sections 3511–3515 of Title III of the Anti-Drug Act of 1988, Public Law 100–690."

B. *Limitations on Delegations I–XXI above:*

1. These delegations exclude the authority to issue regulations or submit reports to Congress and shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.

2. I hereby affirm and ratify any actions taken by the Assistant Secretary for Children and Families or any other Administration for Children and Families' official which, in effect, involved the exercise of these authorities prior to the effective date of these delegations.

C. *Effective Date.* These delegations are effective immediately.

Dated: August 20, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–20449 Filed 8–26–91 8:45 am]

BILLING CODE 4130–01–M

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Sickle Cell Disease

A public meeting will be held on clinical practice guidelines for sickle cell disease. The guidelines will address the following topics: Newborn screening; laboratory methodology for diagnosis of sickle cell disease; genetic counseling; and comprehensive care of infants and children with sickle cell disease.

The guidelines are under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28, 1990 (55 FR 35185).

In addition to the solicitation of written material through the **Federal Register**, a series of public meetings is being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the particular guidelines under development.

A public meeting to address guidelines for sickle cell disease will be held on September 24, as follows:

September 24, 1991—Bethesda Ramada Hotel and Conference Center
9 a.m. to noon—8400 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 654–1000.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act) (42 U.S.C. 299–299c–6), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be presented, diagnosed, treated, and managed clinically.

Section 912(d) of the Act (42 U.S.C. 299b–1(d)) provides that the first guidelines, standards, performance measures, and review criteria developed should:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency of the type of treatment provided; or
2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act (42 U.S.C. 299b–3) lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;
2. Reduce significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments (and potentially produce savings in health care expenditures); and
3. Reduce clinically significant variations in the outcomes of health care services and procedures.

Based on the statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b–12), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics were selected in 1990 for guideline development:

1. Visual Impairment due to Cataract in the Aging Eye
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia
3. Urinary Incontinence in the Adult
4. Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores
5. Sickle Cell Disease
6. Management of Acute Post-Operative Pain

7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting

In addition, in 1991 the following five new topics have been selected for guideline development:

1. Management of Cancer-Related Pain
2. Treatment of Stage II and Greater Pressure Ulcers
3. AIDS and HIV Infection
4. Low Back Disorders
5. Development of Quality Determinants of Mammography

To ensure the development of guidelines, AHCPR, acting through the Forum, has arranged for panels of experts in the above-listed topics and consumers who will develop the specific guidelines. Panel responsibilities include determination of the scope of the guidelines, assessment of the available scientific evidence and clinical consensus, and conducting peer review and pilot review of drafts of the guidelines.

Thus far, public meetings of panels to solicit information and comments from interested parties have been held with respect to benign prostatic hyperplasia, depression, management of post-operative pain, pressure ulcers, urinary incontinence, and cataracts.

Arrangements for September 24 Public Meeting on Sickle Cell Disease

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. Health Systems Research, Inc. (HSR), the organization which provides logistical and technical support to the panels, is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend must register with HSR at the address set out below by September 16 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these to HSR by September 16. If more requests to make oral statements are received than can be accommodated between 9 a.m. and noon on September 24, the chair persons will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of 'ine constraints can be assured that their written comments will be considered by the panel in developing the guidelines.

Registration should be made with and written materials submitted to: Health Systems Research, Inc., Attn: Jean Slutsky, 1001 Connecticut Avenue NW., suite 719; Washington, DC 20036, Phone 202-828-5100, Fax 202-728-9469.

Dated: August 21, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91-20540 Filed 8-26-91; 8:45 am]

BILLING CODE 4160-90-M

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part K, Administration for Children and Families of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services as published at 56 FR 15885-15886 is amended to reflect the removal of the Maternal and Child Health Block Grant program from the Administration for Children and Families functional statement. All delegations of authority pertaining to this program remain with the Health Resources and Services Administration.

Dated: August 20, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-20448 Filed 8-26-91; 8:45 am]

BILLING CODE 4160-18-M

Centers for Disease Control

[Announcement Number 161]

Project Grant to Evaluate Immunity Requirements, Implementation of a Two-Dose Measles Vaccination Schedule, and Impact of Policies on Occurrence of Measles on College and University Campuses

Introduction

The Centers for Disease control (CDC) announces the availability of project grant funds for fiscal year 1991 to assist the American College Health Association (ACHA) to assess implementation of prematriculation immunization requirements (PIRs) by colleges and universities, identify characteristics of PIRs, assess attitudes toward and barriers to implementing PIRs, and assess the impact of a measles PIR on occurrence of measles.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under the Public Health Service Act, sections 301 (42 U.S.C. 241) and 317k (42 U.S.C. 247b(k), as amended.

Eligible Applicant

Assistance will only be provided to ACHA. No other applications are solicited. ACHA is a voluntary, nonprofit organization representing over 850 colleges and universities in the United States, Canada, and internationally, as well as more than 2600 individual health professionals. The Association promotes cooperative efforts among schools of high education, shares knowledge on important college health issues and is a central resource for development of health policies for colleges and universities and educational materials and programs. ACHA has: (1) Sole access to previously developed questionnaires and raw data needed for head-to-head comparisons among the survey respondents in 1986 and institutions participating in this study; (2) previous experience executing studies in colleges and experience in the methods required to execute this study; (3) the only national organization focusing on the target audience for this study and with a unique relationship with colleges which can enhance their interest and willingness to participate; (4) the only national organization for the target institutions with an Immunization Committee, which has staff well qualified to facilitate the study and who have been working nationally with college campuses to establish PIRs, educate administrators on issues related to vaccine-preventable diseases, and provide technical guidance for PIR implementation; (5) access to other colleges and universities across the country and an established reputation that can improve participation; and, (6) a unique relationship with and access to college and university health programs, which have been identified as the best and most reliable source for the information to be collected by the questionnaire. No other multi-university consortium of student health programs with these features and such extensive experience in issues related to vaccine-

preventable diseases exists. Limiting eligibility to ACHA will ensure the most timely and cost-effective start up and completion of the proposed project. Therefore, ACHA is uniquely qualified and the only eligible applicant for this study.

Availability of Funds

Approximately $62,000 is available in Fiscal Year 1991 to fund this project grant. It is expected to begin in September 1991, for a 12-month budget period with a total project period of 24 months. The funding estimate may vary and is subject to change.

Purpose

The purpose of this project grant is to assess implementation of prematriculation immunization requirements (PIRs) by colleges and universities.

Program Objectives

This project grant program has the following objectives:

A. To evaluate the proportion of American colleges and universities that have implemented a PIR since the survey conducted in January 1986.

B. To identify characteristics of PIRs, including vaccines and types of students covered, implementation of a 2-dose measles requirement, documentation of immunity, existence of review procedures and sanctions for non-compliance, exemptions, recordkeeping, and payment for vaccination services.

C. To identify current attitudes of college and university administrators toward implementing PIRs on college campuses that do not have them.

D. To identify possible barriers to the implementation of college PIRs.

E. To assess the impact of a PIR for measles, including a requirement for two doses of vaccine, on the occurrence of measles on college and university campuses.

F. To apply the results of this study to enhance activities to eliminate vaccine-preventable diseases from college campuses.

Program Requirements

A. Identify and establish a mailing list of potential participants consisting of a sample of all two- and four-year colleges, including institutional members of ACHA and colleges with and without a health service.

B. Develop a survey instrument and other materials needed, and execute a survey of the sample using mechanisms to maximize response rate.

C. Using these data, assess the implementation and impact of PIRs by colleges and un 'rsities.

D. Upon completion of these activities, establish a mechanism to disseminate the results to its member institutions and other appropriate entities, and apply the results of this study to enhance activities to eliminate vaccine-preventable diseases from college campuses.

Evaluation Criteria

The application will be evaluated according to the following criteria:

A. The applicant's understanding of the purpose of the study.

B. The extent to which background information and other data demonstrate that the applicant has the administrative support and accessibility to an adequate number of participants in the target groups to accomplish study goals.

C. The extent to which the applicant's objectives are realistic, measurable, time-phased, and related to program requirements.

D. The quality and potential effectiveness of the applicant's proposed activities and methods for meeting the stated objectives.

E. The adequacy of plans to evaluate progress in implementing methods and achieving objectives.

F. The extent to which qualified and experienced personnel are available to carry out the proposed activities.

In addition, consideration will be given to the extent to which the budget request is clearly justified and consistent with the intended use of the funds.

Other Requirements

Confidentiality—All information obtained on any person by any program that is acting with funds awarded through this project grant shall not be disclosed unless that person provides services to that person or as may be required by a law of a state or the political subdivision of a state. Information derived from any such program may be disclosed (a) in summary, statistical, or similar form that maintains the person's anonymity, or (b) for clinical or research purposes, but only if the persons who receive diagnoses or care under such programs are not identified. Recipients of CDC funds that must obtain and retain identifying information as a part of their CDC-approved work plan must (a) maintain the physical security of such records and information at all times; (b) have procedures in place and staff trained to prevent unauthorized disclosure of client identifiers; (c) obtain informed consent by explaining the possible risk of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure; and (d) provide written assurance to this effect.

Executive Order 12372

This application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372 (45 CFR part 100).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this project grant is 93.283.

Application and Submission Deadline

The American College Health Association (ACHA) must submit an original and two copies of the application (Form PHS-5161-1) on or before September 6, 1991 to: Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305.

Where to Obtain Additional Information

If you are interested in obtaining additional information about this project, please reference Announcement Number 161, entitled "Project Grant to Evaluate Immunity Requirements, Implementation of a Two-Dose Measles Vaccination Schedule, and Impact of Policies on Occurrence of Measles on College and University Campuses," and contact Eddie L. Wilder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305, (404) 842-6640 or FTS 236-6640 for business management technical assistance.

Programmatic technical assistance may be obtained from Walter W. Williams, M.D., Division of Immunization, National Center for Prevention Services, Centers for Disease Control, Mailstop E05, Atlanta, GA 30333, at (404) 639-1870, or FTS 236-1870, Telefax (404) 639-1433.

A copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: August 20, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-20467 Filed 8-26-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committee; Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine. Two vacancies will occur on the committee on October 31, 1991.

DATES: No cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership should be submitted to Gary E. Stefan (address below).

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV-244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0830.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee. The function of the committee is to review and evaluate available information concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Criteria for Members

Persons nominated for membership on the Veterinary Medicine Advisory Committee shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. FDA asks potential candidates to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

FDA has a special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and handicapped candidates.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 21, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-20474 Filed 8-26-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0257]

Public Hearing: Section 16 of the Safe Medical Devices Act of 1990; Product Jurisdiction; Combination Products Comprised of a Drug, Device, or Biological Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the location for a September 6, 1991 public hearing which will be held to discuss implementation of section 16 of the Safe Medical Devices Act of 1990 regarding jurisdictional issues for combination products comprised of a drug, device, or biological product. FDA previously issued a **Federal Register** notice requesting that persons who intended to participate in the hearing notify the agency by August 8, 1991. Persons interested in participating who did not request an opportunity by August 8, 1991 should notify the agency as described in the **SUPPLEMENTARY INFORMATION** section of this document. These individuals will be allowed to make an oral presentation at the conclusion of the hearing, as time permits and at the discretion of the chairperson. The procedures governing the hearing are found at 21 CFR part 15.

DATES: The public hearing will be held on Friday, September 6, 1991, 9 a.m. to 5 p.m.

ADDRESSES: The public hearing will be held at the Holiday Inn Crowne Plaza, Plaza III, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Office of the Commissioner (HF-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 12, 1991 (56 FR 31951), the agency announced by notice that a public hearing would be held on September 6, 1991 to give all interested persons the opportunity to provide comments and suggestions on the content and scope of the procedural regulation implementing section 16 of the Safe Medical Devices Act of 1990 regarding jurisdictional issues for combination products comprised of a drug, device, or biological product. This notice requested that persons interested in participating in the hearing notify the agency by August 8, 1991 of their intent to participate and submit an outline of their presentation. The agency also announced that after it received these responses and was able to determine the number of persons participating, the location of the public hearing would be announced in a future **Federal Register** notice.

The September 6, 1991 hearing will be held at the Holiday Inn Crowne Plaza, Plaza III, Rockville, Md; this conference room will accommodate up to 250 people. At this time, over 150 people have registered to either participate or attend. Any persons who are interested in participating but who have not previously notified the agency that they wish to do so should: (1) File a written notice of participation containing the name, address, phone number, facsimile number, affiliation, if any, of the participant, topic of the presentation, and the approximate amount of time requested for the presentation; and (2) submit a brief description or outline of their presentation so that the chairperson and any others who may serve on a panel conducting the hearing may formulate useful questions. The requested information, including the written notice of participation, may be submitted to the contact person (address above).

Persons who did not register to make a presentation by August 8, 1991, but who register before or at the hearing will be given the opportunity to speak at the conclusion of the hearing as time permits and the discretion of the chairperson.

Dated: August 21, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-20475 Filed 8-26-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Advisory Council for Nursing Research and its Subcommittees and a Joint Meeting of the National Advisory Council for Nursing Research and the Advisory Council for Nurses Education

Pursuant to Public Law 92-463, notice is hereby given of the Joint Meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research; and the Advisory Council for Nurses Education, Health Resources and Services Administration, and the meetings of the National Advisory Council for Nursing Research and its subcommittees.

The joint meeting of the two councils will be held on September 5, from 8:30 a.m. to 12 noon at the Parklawn Building, Conference Room G & H, Rockville, Maryland.

Meetings of the full Council and its subcommittees will be held at times and places listed below. As noted below, the meetings of the full Council and its Subcommittees will open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

National Nursing Research Agenda Subcommittee, September 4, 1991, Building 31C, Conference Room 6, 8:30 a.m. to 10 a.m. This subcommittee provides policy guidance to the National Center for Nursing Research Director concerning the National Nursing Research Agenda in general and the Priority Expert Panels in particular.

Joint Meeting of the National Nursing Research Agenda Subcommittee and the Planning Subcommittee, September 4, 1991, Building 31C, Conference Room 6, 10 a.m. to 11:30 a.m.

Planning Subcommittee, September 4, 1991, Building 31B, Conference Room 5B39, 12:30 p.m. to 2 p.m. This subcommittee provides advice to the National Center for Nursing Research on long-term and strategic planning, and policy issues.

Communications Subcommittee, September 4, 1991, Building 31C, Conference Room 6, 12:30 p.m. to 2 p.m. The purpose of this subcommittee is to advise the National Center for Nursing Research on goals and strategies for enhancing communications with specific audiences.

Nursing Resources and Health Policy Subcommittee, September 5, 1991, Building 31B, Conference Room 5B39, 5 p.m. to 6 p.m. This subcommittee provides advice to the National Center for Nursing Research on nursing resources and health policy as they relate to nursing science and the achievement of quality of and effective outcomes in patient care.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d)) of Public Law 92-463, the meeting of the Research Subcommittee will be closed to the public on September 4, from 2 p.m. to 4 p.m. and the meeting of the full Council on September 6, from 8 a.m. to 11 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Vicki Thompson, Council Assistant, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, room 5B23, Bethesda, Maryland 20892, (301) 496-0207, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: August 16, 1991.

Jeanne N. Ketley,

Acting Committee Management Officer, NIH.

[FR Doc. 91-20618 Filed 8-26-91; 8:45 am]

BILLING CODE 4140-01-M

National Arthritis and Musculoskeletal and Skin Diseases Advisory Council; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and musculoskeletal and Skin Disease on September 5 and 6, 1991, Wilson Hall, Shannon Building, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public September 5 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on September 5 from 1 p.m. to recess and again on September 6 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting may be obtained from Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496-0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: August 16, 1991.

Jeanne N. Ketley,

Acting NIH Committee Management Officer.

[FR Doc. 91-20619 Filed 8-26-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-010-4410-08]

Notice of Intent to Amend the Little Snake Resource Management Plan and Prepare an Associated Environmental Assessment, Routt, and Moffat Counties; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Little Snake Resource Management Plan.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to amend the Little Snake Resource Management Plan (RMP) for the

reintroduction of black-footed ferrets into the Little Snake Resource Area. The Fish and Wildlife Service is proposing to reintroduce black-footed ferrets, as a non-essential experimental population, into the Little Snake Resource Area. The Fish and Wildlife Service, in conjunction with the BLM and the Colorado Division of Wildlife, is preparing a reintroduction management plan and environmental assessment to determine what measures would be necessary for the reintroduction and what impacts may result. As a part of the amendment process, the BLM will determine if the management plan will result in a change in the scope of the resource uses or a change in the terms, condition, or decisions of the Little Snake RMP. The BLM is seeking public input on this RMP amendment.

EFFECTIVE DATES: The public scoping period is initiated with publication of this notice of intent and ends October 11, 1991. A scoping meeting will be held September 26, 1991, at the BLM, Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado. The purpose of the meeting is to (1) identify issues and concerns concerning potential reintroduction of black-footed ferrets into Moffat County; and (2) encourage public participation in the plan amendment process. The meeting is scheduled from 7 to 9 p.m. Bureau and Fish and Wildlife Service representatives will be available to answer questions about the amendment. Written comments on the scope of the amendment must be postmarked by October 11, 1991.

An amendment/EA is scheduled to be completed in 1992 and made available for public review and comment. Notice of availability of the draft EA will be published in local papers and parties who have requested to be on the mailing list for this amendment will be notified by mail.

FOR FURTHER INFORMATION CONTACT: Mike Albee, Project Coordinator, Bureau of Land Management, 1280 Industrial Avenue, Craig, Colorado 81625, or telephone (303) 824–4441. Existing planning documents and information are available at the above address.

SUPPLEMENTARY INFORMATION: The Little Snake Resource Area comprises an area of 3,258,000 acres located in the northwest corner of Colorado. The Resource Area includes most of Moffat and Routt counties and a small portion of Rio Blanco County. The area is bordered on the north by the state of Wyoming; on the west by the state of Utah and Dinosaur National Monument; on the south by the White River Resource Area (BLM, Craig District), and the Grand Junction District (BLM); and on the east by Kremmling Resource Area (BLM, Craig District). Of the total area, 40 percent, or 1,298,000 acres, is public land administrated by BLM, the majority of which are concentrated in the western half of the Resource Area. Of the remainder, 53 percent is privately owned, and 7 percent is administered by the state of Colorado.

The area proposed for black-footed ferret reintroduction is located in northwestern Moffat County.

The general issues that will be addressed include: Access to public lands, economic and social conditions, threatened and endangered species, rangeland uses, recreation uses, wildlife habitat management, mineral exploration and development, and public rights-of-way as they relate to potential black-footed ferret reintroduction.

An interdisciplinary approach will be used to prepare the amendment/EA. The following discipline will be included: Economics, social values, geology, realty, vegetation, range, wildlife, cultural resources, and recreation.

The planning criteria for amending the Little Snake RMP is to establish a management objective which provides for black-footed ferret reintroduction while not adversely impacting other resources or uses.

Public review and comment will be requested on the amendment/EA. Public meetings to receive comments may be scheduled if there is sufficient interest following publication of the amendment/EA. News releases and newsletters will be issued to inform the public of planning progress; dates, times, and locations of additional meetings; and the availability of planning documents and related information. In addition, a list of persons interested in or affected by the proposed amendment will be used to provide notification of public participation opportunities.

A range of alternatives associated with the proposed reintroduction of black-footed ferrets, including the No Action Alternative, will be considered. Federal, State, and local agencies and other individuals or organizations who may be interested or affected by the Bureau's decision on the Amendment to the Little Snake RMP are invited to participate in the scoping process for this environmental analysis. To be most helpful, comments should be as specific as possible.

The scoping process for the RMP amendment/EA will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives; and (3) notification of interested groups, individuals, and agencies so that information concerning these issues or other additional issues can be obtained.

Dated: August 19, 1991.

William J. Pulford,

District Manager.

[FR Doc. 91–20442 Filed 8–26–91; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

August 21, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB,

Department of Justice, Washington, DC 20530.

New Collection

(1) Correctional Technology: A Users Guide.

(2) No form number, National Institute of Corrections.

(3) One-time response.

(4) State or local governments. This collection will make possible intergovernmental sharing of information and informed selection of more effective technologies for use in correctional institutions.

(5) 300 annual respondents at .75 hours per total response.

(6) 225 hours.

(7) Not applicable under 3504(h).

Public comment on this item is encouraged.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-20477 Filed 8-26-91; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Acme Boot Co., Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 6, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 6, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of August 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Acme Boot Co., Inc. (URW)	Waverly, TN	08/12/91	07/31/91	26,172	Fashion and military boots.
American Cyanamid (Co)	Bound Brook, NJ	08/12/91	07/29/91	26,173	Urethane chemical—cyanacrill.
Calgon Corp, Water Mgt Div. (wkrs)	Pittsburgh, PA	08/12/91	07/29/91	26.174	Water treatment chemicals.
Camden Window & Millwork (wkrs)	Pennsauken, NJ	08/12/91	07/21/91	26,175	Custom wood doors, windows, moulding.
Cherry Richline (wkrs)	St. Paul, MN	08/12/91	08/02/91	26,176	Rivet eyelets and components.
Comtek Manufacturing of Oregon (wkrs)	Beaverton, OR	08/12/91	07/23/91	26,177	Custon metal parts.
Crouse-Hinds/Cam-Lok Products	Cincinnati, OH	08/12/91	07/31/91	26,178	Electrical connectors.
Eaglewear, Inc. ACTWU	Gallitzin, PA	08/12/91	08/01/91	26,179	Knit shirts.
Etonic/Tretorn (wkrs)	Richmond, ME	08/12/91	07/29/91	26,180	Golf shoes.
Forks Shake (Co)	Port Angeles, WA	08/12/91	07/27/91	26,181	Cedar shakes and shingles.
Fujitsu America, Inc (wkrs)	Palm Bay, FL	08/12/91	07/31/91	26,182	Data transmission cables.
Furniture Assoc., Inc USWA	Allentown, PA	08/12/91	07/31/91	26,183	Executive office furniture.
G.M. Corp./East, West, Central Pt. (UAW)	Pontiac, MI	08/12/91	07/31/91	26,184	Truck assembly.
M&R Marking Systems (IBT)	Cranford, NJ	08/12/91	08/01/91	26,185	Marking devices.
Maidenform, Inc ILGWU	Princeton, WV	08/12/91	08/02/91	26,186	Undergarments.
Maidenform, Inc. ILGWU	Bayonne, NJ	08/12/91	08/02/91	26,187	Undergarments.
Mantor Electronics, Inc (Co)	El Paso, TX	08/12/91	07/31/91	26,188	BMW car stereos.
Milton Shoe Mfg (MSM) UFCW	Herndon, PA	08/12/91	07/29/91	26,189	Shoe stitching.
Mohawk Technical Associates, Inc (Co)	Ilion, NY	08/12/91	08/02/91	26,190	Electronic/electrical support.
Monsanto Chemical Co USWA	Nitro, WV	08/12/91	07/30/91	26,191	Thiofide.
National Micronetics, Inc. (wkrs)	Kingston, NY	08/12/91	08/05/91	26,192	Magnetic recording heads.
National Wire Product Industries USWA	Baltimore, MD	08/12/91	08/02/91	26,193	Concrete reinforcement.
Northeast Chrysler Plymouth, Inc (wkrs)	Bangor, ME	08/12/91	07/30/91	26,194	Chrysler Plymouth dealership.
Penn Footwear Co UFCW	Nanticoke, PA	08/12/91	07/30/91	26,195	Casual footwear.
Rumford Nat'l Graphics of Belfast (wkrs)	Belfast, ME	08/12/91	07/26/91	26,196	Digest format booklets.
Shawmut Development Corp (wkrs)	Kittanning, PA	08/12/91	07/31/91	26,197	Oil and gas.
Susquehanna Motor Co (Co)	Milesburg, PA	08/12/91	08/02/91	26,198	Mack truck dealership.
Teledyne Continental Motors (UAW)	Muskegon, MI	08/12/91	08/01/91	26,199	Flat head industrial engines.
White Lift Truck Parts & Mfg (Co)	Osseo, MN	08/12/91	07/31/91	26,200	Industrial lift trucks.
Zeigler Mfg, Inc. (wkrs)	Swansea, SC	08/12/91	07/30/91	26,201	Sportswear.

[FR Doc. 91-20487 Filed 8-26-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,033]

Hansley Industries, Inc., Sweetwater, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 8, 1991 in response to a worker petition which was filed on behalf of workers at Hansley Industries, Incorporated, Sweetwater, Tennessee.

An active certification covering the petitioning group of workers remains in effect (TA-W-26,001). Consequently,

further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of August, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-20488 Filed 8-26-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,976]

Phelps Dodge Corp., Bayway Operations, Elizabeth, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 24, 1991 in response to a worker petition which was filed on June 24, 1991 on behalf of workers at Phelps Dodge Corporation, Bayway Operations, Elizabeth, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of August, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-20485 Filed 8-26-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,886; Tektronix, Inc., Applied Chemical Components Div., Beaverton, OK

TA-W-25,982; United Technologies Auto, Keokuk, IA

TA-W-25,905; Simpson Timber, Simpson Door Plant, McCleary, WA

TA-W-25,896; Gencorp Automotive, Cuba, MO

TA-W-26,017; Adronics/Elrob Manufacturing Corp., Cedar Grove, NJ

TA-W-25,8845; Richwoods Mining Co., Richwoods, MO

TA-W-25,906; Sonicstar International Limited, Jamestown, NY

TA-W-25,888; Vancouver Extrusion Co., Vancouver, WA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,925; Thomas & Betts Corp., Elizabeth, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,979; Royal Silk, Limited, Clifton, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,831; ASKO, Inc., American Shear Knife Div., West Homestead, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,040; Nationwide Data Systems, Inc., Wilkes-Barre, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974, period as required for certification.

TA-W-25,875; IMC Magnetics, Miami Lakes, FL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,959; C & W Coal Co., Clarksburg, WV

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,919; Jo-Mar, Inc., Textile Div., Philadelphia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,929; Astoria Plywood Corp., Astoria, OR

U.S. imports of softwood playwood are negligible.

TA-W-25,926; U.S. Steel Mining Co., Shawnee Mine, Pineville, WV

U.S. imports of coal are negligible.

TA-W-25,952; Weyerhaeuser Co., Klamath Falls, OR

U.S. imports of software plywood are negligible.

TA-W-26,025; Columbia River Log Scaling & Grading Bureau, Eugene, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,923; Rocky Mountain Temporaries, Boulder, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,922; MGM/UA Home Video, Inc., Gallatin, TN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,939; Linde Gases of The South, Houston, TX

The workers' firm does not produce an article as requirêd for certification under section 222 of the Trade Act of 1974.

TA-W-25,900; ABB Kent-Taylor, Rochester, NY

Increased imports did not contribute importantly to worker separations at the firm.

AFFIRMATIVE DETERMINATIONS

TA-W-26,094; Cable Craft, Inc. d/b/a Cable Star, Inc., Glasglow, KY

A certification was issued covering all workers separated on or after July 12, 1990 and before May 19, 1991.

TA-W-25,948; Safe-Play Tuf-Wear, Sidney, NE

A certification was issued covering all workers separated on or after June 5, 1990.

TA-W-25,848; Nustyle Knitting Mills, Inc., Bronx, NY

A certification was issued covering all workers separated on or after May 6, 1990.

TA-W-25,792; Bergman Knitting Mill, Philadelphia, PA

A certification was issued covering all workers separated on or after April 22, 1990.

TA-W-25,794; Brown & Sharpe Manufacturing Co., Machine Tools Div., North Kingstown, RI

A certification was issued covering all workers separated on or after April 29, 1990.

TA-W-25,932; Dawn Dress Co., Scranton, PA

A certification was issued covering all workers separated on or after June 6 1990.

TA-W-25,946; R & M Fashions, Dickinson City, PA

A certification was issued covering all workers separated on or after June 6, 1990.

TA-W-25,910; Big Yank Corp., Wewoka, OK

A certification was issued covering all workers separated on or after May 29, 1990.

TA-W-25,891; Bagmaster, Inc., New York, NY

A certification was issued covering all workers separated on or after May 27, 1990.

TA-W-25,891A; Aries Handbags, Inc., New York, NY

A certification was issued covering all workers separated on or after May 27, 1990.

TA-W-25,999; Hansley Industries, Inc., West Columbia, SC

A certification was issued covering all workers separated on or after June 11, 1990.

TA-W-26,000; Hansley Industries, Inc., Bowman, SC

A certification was issued covering all workers separated on or after June 11, 1990.

TA-W-26,001; Hansley Industries, Inc., Sweetwater, TN

A certification was issued covering all workers separated on or after June 11, 1990.

TA-W-25,924; Shelborne Shirt Co., Inc., New York, NY

A certification was issued covering all workers separated on or after December 1, 1989.

I hereby certify that the aforementioned determinations were issued during the months of August, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 20, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-20486 Filed 8-26-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before September 26, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506, (202-786-0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202) 786-0494, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Guidelines, Application Materials, and Administrative Requirements for NEH Challenge Grants.

Form Number: OMB 3136-0062, Expires 12/31/91.

Frequency of Collection: Annually.

Respondents: Applicants for, and Recipients of, NEH Challenge Grants.

Use: Application for grants; administration of grants.

Estimated Number of Respondents 250 Applicants Annually; 50 Grant Recipients Annually.

Frequency of Response: Once to submit an application. Annually for Grant Recipients.

Estimated Hours for Respondents to Provide Information: 50 hours per respondent.

Estimated Total Annual Reporting and Recording Burden: 27,140 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 91-20501 Filed 8-26-91; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co., Byron Station, Unit Nos. 1 and 2, Braidwood Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77, issued to Commonwealth Edison Company (CECo, the licensee), for operation of the Byron Station, Unit Nos. 1 and 2, and Braidwood Station, Unit Nos. 1 and 2, located in Ogle County and Will County, Illinois, respectively.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to TS 4.6.1.3a to reflect the option of pressure testing the containment air lock gaskets with a permanently installed continuous pressurization and leakage monitoring system, or manually with precision flow measurements.

The proposed action is in accordance with the licensee's application for amendment dated October 4, 1988. That application was supplemented by letters dated August 14, 1989, March 20 and April 8, 1991, which provided additional

details but did not change the substance of the requested amendment.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide the licensee an option to use a continuous pressure testing method of the containment air lock door seal gaskets in lieu of manual testing which reflects the NRC staff's position regarding the 72-hour air lock operability test in NUREG-0452, Revision 4a, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors."

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS and concludes that use of a permanently installed continuous pressurization and leakage monitoring system would not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plan effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on November 4, 1988 (53 FR 44685). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Byron Station and Briadwood Station, dated April 1982 and June 1984, respectively.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated October 4, 1988, as supplemental August 14, 1989, March 20 and April 8, 1991, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the: for Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Briadwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 15th day of August 1991.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-20525 Filed 8-26-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements 10 CFR part 50, appendix R, "Fire Protection Program For Nuclear Power Facilities Operating Prior To January 1, 1979," section III.G.3, to the Power Authority of the State of New York (PASNY/licensee) for the James A. FitzPatrick Nuclear Power Plant, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

Section III.G of 10 CFR part 50, appendix R, requires that where cables or equipment of redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area outside of primary containment, one of the following means of ensuring that one of the redundant trains is free of fire damage shall be provided:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustible or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not satisfied, section III.G.3 of 10 CFR part 50, appendix R, requires alternative shutdown capability independent of the fire area of concern. Furthermore, this section requires that fire detection and a fixed fire suppression system be provided in areas, rooms, or zones for which alternate shutdown capability is provided.

The licensee recently determined that redundant cables for safe shutdown systems are located in the Battery Room Corridor Fire Zone BR-5. Alternative shutdown capability is required for this area as a result of possible loss of Divisions "A" and "B" cabling due to a fire in the area. Modifications previously implemented in Fire Zone BR-4 to ensure alternative shutdown capability for a fire in the Main Control Room also ensure alternative shutdown capability for a fire in Fire Zone BR-5. This alternative shutdown capability is provided by the provision of Division "B" dc power to the remote shutdown panels via distribution panel 71 DC-B4 (Fire Zone EG-6). Automatic detection is provided for the Battery Room Corridor; however, automatic suppression system capability is not. As a result, the Battery Room Corridor is not in compliance with

section III.G.3 of 10 CFR part 50, appendix R.

The Need for the Proposed Action

The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

Environmental Impact of the Proposed Action

The proposed exemption is from the requirement of 10 CFR part 50, appendix R, section III.G.3, to have an automatic fire suppression system for areas containing redundant trains of safe shutdown cables, specifically the Battery Room Corridor (Fire Zone BR-5)

The Battery Room Corridor has a combustible loading consisting of cable insulation, with an equivalent fire severity of under one hour. Automatic detection consisting of ceiling mounted ionization detectors is provided in this corridor. Potential fires in the Battery Room Corridor would involve primarily cable insulation located in trays near ceiling level or in vertical risers along the south wall. Fires of this nature would be detected in the incipient stage, with alarm notification in the continuously-manned Main Control Room. Alarm notification would result in prompt dispatch of the fire brigade for rapid initiation of manual fire fighting activities. Portable extinguishers and manual hose stations are provided in the Battery Room Corridor and adjacent areas to assist in this fire fighting effort. Reasonable assurance is provided that manual fire fighting activities would result in prompt extinguishment of postulated fires. Furthermore, in the unlikely event of fire in this fire zone, and damage to the redundant safe shutdown cables, alternate shutdown capability is provided.

Based on the considerations above, the staff concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases significantly in excess of those previously determined for James A. FitzPatrick Nuclear Power Plant. The proposed exemption would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. In addition, the exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of 10 CFR part 50, appendix R, section III.G.3. Such action would not enhance the protection of the environment. Furthermore, the installation of an automatic fire suppression system would result in additional costs to the licensee without adding any benefits already available by the independent shutdown capability.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant," dated March 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated July 31, 1991, and August 6, 1991. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 20th day of August 1991.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Dirctor, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-20523 Filed 8-26-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, appendix R, "Fire Protection Program For Nuclear Power Facilities Operating Prior To January 1, 1979," section III.G.3, to the Power Authority of the State of New York (PASNY/licensee) for the James A. FitzPatrick Nuclear Power Plant, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action:

Section III.G.3 of 10 CFR part 50, appendix R, requires fire detection and a fixed fire suppression system in an area, room, or zone where electrical circuits associated with alternative or dedicated shutdown could prevent operation of equipment required for hot shutdown.

A recent engineering evaluation performed by the licensee determined that if power to the ventilation fans in the East and West Electric Bays is lost, temperatures could exceed 150 degrees Fahrenheit (assuming "worst case" conditions). The ability of all equipment in the electric bays to operate at these temperatures cannot be assured. Equipment in these bays is required to shut down the plant in the event of a fire.

A fire in either the control room or turbine building could damage electrical cables "associated" with the electric bay fans. In the event of a fire in Fire Area VII (control room, relay room, or cable spreading room), a short circuit in the annunciator and light circuit for fans 67FN-16A1, 16A2, 16B1, and 16B2 could blow the control power fuses and cause the fan to be inoperable. A fire in the turbine building (Fire Area IE) could damage two local control panels (67HV-2A and 67HV-2B), which could result in electric bay fans 67FN-16A1, 16A2, 16B1, and 16B2 being inoperable. In either fire scenario, the temperature in the electric bays will increase and may cause equipment in the bays to potentially overheat and fail.

To assure that the fans will function in the event of fire in either the Control Room or turbine building, the licensee performed a modification (M1-91-179) to eliminate all control of Electric Bay Ventilation fans 67FN-16B1 and 16B2 from the Control Room, and 67FN-16A1 and 16A2 from the local area in the turbine building. In other words, with

the installation of this modification, ventilation for the east electric bay (Fans 67FN–16B1 and 16B2) can be controlled from local control panels in the turbine building, and ventilation for the west electric bay (Fans 67FN–16A1 and 16A2) can be controlled from the Control Room.

Prior to the modification of the electric bay ventilation system circuitry, the licensee relied upon circuit separation. With the installation of this modification, the licensee must comply with the provisions of 10 CFR part 50, appendix R, section III.G.3, based on the premise that the electric bay ventilation is required to be operable to ensure safe shutdown capability. However, the turbine building area (Fire Area IE) which houses the local control panels (67HV–2A and 2B) for the east electric bay ventilation fans (67FN–16B1 and 16B2) has no fire detection system. Therefore, the licensee has requested exemption from the requirements of 10 CFR part 50, appendix R, section III.G.3, to the extent that a fire detection system is required for the turbine building Fire Area IE.

The Need for the Proposed Action:

The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

Environmental Impact of the Proposed Action:

Section III.G.3 of 10 CFR part 50, appendix R, requires fire detection and a fixed fire suppression system in an area, room, or zone where electrical circuits associated with alternative or dedicated shutdown could prevent operation of equipment required for hot shutdown. The east electric bay contains equipment necessary to achieve hot shutdown of the plant. Without the ventilation fans being operable, the temperature in the electric bay will increase and may cause this equipment to potentially overheat and fail. Contrary to the above regulation, the turbine building (Fire Area IE) area which houses the local control panels for the east electric bay ventilation fans has no fire detection system. Therefore, the licensee has requested exemption from the requirements of 10 CFR part 50, appendix R, section III.G.3, to the extent that a fire detection system is required for the turbine building.

The immediate area of the turbine building which houses the local controls for the east electric bay ventilation fans contains minimal quantities of exposed combustible material. Therefore, the probability of damage due to a fire either starting in or spreading to this location is considered highly unlikely. This area is without fire detection or suppression capabilities. However, adjacent areas on the same elevation (272′–0″), which can present an exposure fire hazard to the location of concern, are protected by automatic sprinklers. These adjacent areas are not provided with automatic detection capability. Potential fire scenarios involving exposed combustible materials in these adjacent locations would result in suppression system actuation, and an alarm in the Main Control Room. The fire brigade would immediately be dispatched to the area. Furthermore, the suppression system actuation would control and/or extinguish the fire prior to arrival of the fire brigade. Even should fire damage occur in the area under consideration, there will be no impact on safe shutdown capability since the availability of ventilation to the West Electric Bay is provided outside of the turbine building Fire Area IE.

Based on the considerations discussed above, the NRC staff concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases significantly in excess of those previously determined for the James A. FitzPatrick Nuclear Power Plant. The proposed exemption would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. In addition, the exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action:

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of 10 CFR part 50, appendix R, section III.G.3. Such action would not enhance the protection of the environment. Furthermore, the installation of a fire detection system would result in additional costs to the licensee without adding any benefits already available by the independent shutdown capability.

Alternative Use of Resources:

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant," dated March 1973.

Agencies and Persons Consulted:

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated July 31, 1991, and August 6, 1991. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 20th day of August 1991.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects–I/II; Office of Nuclear Reactor Regulation.

[FR Doc. 91–20524 Filed 8–26–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–443]

Public Service Co. of New Hampshire; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–86 issued to the Public Service Company of New Hampshire (PSNH or the licensee) for operation of the Seabrook Station located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment. In addition, new TS are added for new fuel assembly storage and spent fuel assembly storage.

The proposed action is in accordance with the licensee's application for amendment dated March 18, 1991.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment, and provides the flexibility of extending the fuel irradiation and permitting operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would permit use of fuel enrichment with Uranium 235 up to 5.0 weight percent. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup and higher enrichment may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the Federal Register (53 FR 30355) on August 11, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Seabrook Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with resepct to this action, see the application for amendment dated March 18, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 21st day of August 1991.

For the Nuclear Regulatory Commission.

Susan F. Shankman,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–20526 Filed 8–26–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50–483]

Union Electric Co., Callaway Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Section III.A.1.(a) of appendix J to 10 CFR part 50 to the Union Electric Company (the licensee) for the Callaway Plant, Unit 1, located in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a partial exemption from the requirements of Section III.A.1.(a) of Appendix J to 10 CFR part 50. This section requires, in part, that periodic Type A tests (i.e., those tests conducted after the initial Type A test) shall be terminated if potentially excessive leakage paths are identified which will interfere with the satisfactory completion of these tests. This section then requires that local leakage rates be measured through those paths exhibiting potentially excessive leakage and that repairs and/or adjustments be made prior to restarting the Type A test.

The proposed action is in accordance with Item 2 of the licensee's request for exemption dated March 15, 1991.

The Need for the Proposed Action

The proposed exemption is needed to avoid delays during refueling outages in the event that potentially excessive local leakage paths are found while conducting containment integrated leakage rate tests (CILRTs). In these circumstances, this delay would occur on the critical path for restart; the delay would be about 1½ to 2 days.

Environmental Impacts of the Proposed Action

The Commission has determined that granting the proposed exemption would have no impact on the reactor primary containment leakage relative to that currently required by Section III.A.1.(a) in that repairs and/or adjustments to those paths identified as causing excessive leakage will continue to be made, thereby resulting in the same "as left" containment leakage rates. Accordingly, there will be no increase in either the probability or the amount of radiological release from the Callaway Plant in the event of an accident. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the requested exemption.

With regard to potential nonradiological impacts, the proposed subject exemption causes no change in the manner of the plant operation. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no

significant nonradiological environmen al impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts attributed to the facility, but could delay restart of the plant in the event of excessive local leakage rates. This would result in the expenditure of resources without any compensating benefit.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Callaway Plant, Unit No. 1," dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to these actions, refer to Item 2 of the request for exemptions dated March 15, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 20th day of August 1991.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Acting Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-20527 Filed 8-26-91; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Destin, South Walton County, TX

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the Destin property located in South Walton County, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until November 25, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Dennis W. Kirsch, Asset Specialist, Resolution Trust Corporation, Southern Consolidated Office, 1010 Reunion Place #25, San Antonio, TX 78217, (512) 524-4879, Fax (512) 524-7166.

SUPPLEMENTARY INFORMATION: The property is located on the south side of U.S. Highway 98, five and one-half miles east of the Okaloosa County line and Destin City limits. The property is within a unit of the Coastal Barrier Resources System designated as, "Four Mile Village Tract 21", Unit P31A. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of four undeveloped parcels with some fencing as the only improvement. The southern boundary, which is 1,278 feet long, lies about 800 feet north of the Gulf of Mexico and about 500 feet north of the State Department of Natural Resources Construction Control Line. This property includes approximately six acres of the eastern end of Bald Hill Lake, also known as Morris Lake.

Property size: 106.89 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before November 25, 1991. By the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3."Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by November 25, 1991, to Dennis Kirsch at the above ADDRESSES and in the following form:

Notice of serious interest

RE: Destin, Florida

Federal Register Publication Date:

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1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Addressed/Telephone/Fax).

Dated: August 21, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-20529 Filed 8-26-91; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Thousand Oaks, Ventura County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Thousands Oaks located in Ventura County, California is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until November 25, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Joanne Burroughs, Resolution Trust Corporation, Central Western Consolidated Office, 2910 North 44th Street, Phoenix, AZ 85018, (602) 381-3460, Fax (602) 954-9549.

SUPPLEMENTARY INFORMATION: The property is located at the southern terminus of Sundown Road, just south of Ventura Freeway (Highway 101) in

Thousand Oaks, Ventura County, California. The majority of the site sits in a box canyon in the foothills of the Santa Monica Mountains. The area immediately to the south is owned by the Conejo Open Space Agency (COSCA) with the Santa Monica Mountains and Santa Monica National Park located beyond the COSCA land to the south and southwest. The property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of undeveloped land partially wooded with a substantial number of oak and sycamore trees. These trees are protected by the Thousand Oaks City Council Ordinances. Additional features include riparian corridors which support wildlife such as mule deer, bobcat, western gray fox, mountain lion, coyote, racoon, and opossum. Redtail hawks, great horned owls, and kestrels also forage extensively through the property

Property size: 231.4 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before November 25, 1991, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by November 25, 1991, to Joanne Burroughs at the above ADDRESSES and in the following form:

Notice of Serious Interest
RE: Thousand Oaks
Federal Register Publication
Date:________

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: August 21, 1991
Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 91-20530 Filed 8-26-91; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272-2142. Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549.

Extension, Proxy Interviews, File No. 270-343

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to continue interviews of up to 150 persons or entities concerning practical application of the Commission's proxy rules under section 14 of the Securities Exchange Act of 1934. These interviews are necessary to gain a greater understanding and appreciation of the procedures adopted to comply with the proxy rules. Each interview is estimated to require one burden hour.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Project 3235-0390), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 15, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-20459 Filed 8-26-91; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142. Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension

File No. 270-1, Rule 13e-3, Schedule 13E-3
File No. 270-114, Regulations 14D and 14E, Schedules 14D-1 and 14D-9
File No. 270-137, Regulations 13D and 13G, Schedules 13D and 13G

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval extension of the following: Rule 13E-3, Schedule 13E-3; Regulations 14D and 14E, Schedules 14D-1 and 14D-9; and Regulations 13D and 13G, Schedules 13D and 13G. The regulations and schedules provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. Schedule 13E-3 affects 221 filers for a total of 30,996 burden hours; Schedules 14D-1 and 14D-9 affect 366 filers for a total of 129,656 burden hours; and Schedules 13D and 13G affect 6,536 filers for a total of 89,870 burden hours.

The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are derived from a comprehensive or even a representative survey of the cost of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0145, 0102, 0007), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 14, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-20460 Filed 8-26-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 21, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Huntingdon International Holdings Plc
American Depositary Receipts, Ordinary Stock 5p Par Value (File No. 7–7159)
Vanguard Real Estate Fund I
Shares of Beneficial Interest (File No. 7–7160)
Vanguard Real Estate Fund II
Shares of Beneficial Interest (File No. 7–7161)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 12, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–20458 Filed 8–26–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18284; International Series Release No. 307; 812–7740]

Industrial Series Trust, et al.; Proposed Notice of Application

August 21, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Industrial Series Trust (the "Trust") and The Mackenzie Funds Inc. (the "Company"), on behalf of themselves and all existing and future series of the Trust, all existing and future series of the Company, and all future investment companies and any series thereof for which Mackenzie Investment Management Inc. ("MIMI") or Mackenzie Financial Corporation ("MFC"), or a subsidiary or affiliate of MIMI or of MFC serves as investment adviser.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the 1940 Act and Rule 12d3–1 thereunder.

SUMMARY OF APPLICATION: Applicants seeks a conditional order permitting them to acquire equity and convertible debt securities of foreign issuers that derived more than 15% of their gross revenue from securities-related activities in their most recent fiscal year, in accordance with the conditions of the proposed amendments to Rule 12d3–1 under the 1940 Act.

FILING DATE: The application was filed on June 17, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o John N. Breazeale, Secretary, Industrial Series Trust and The MacKenzie Funds Inc., suite 300, 700 South Federal Highway, Boca Raton, Florida 33432.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered as an open-end investment company under the 1940 Act and currently consists of nine separate series that are offered to the public. The Company, a Maryland corporation, is registered as an open-end investment company under the 1940 Act and currently consists of four separate series that are offered to the public. MIMI, a wholly-owned subsidiary of MFC, is the distributor for the Trust and the Company and is also the investment adviser to a number of series of the Trust and the Company. MFC is the investment adviser to the remaining series.

2. The Applicants wish to be able to invest in equity or convertible debt securities, or both, issued by foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from activities as a broker, a dealer, an underwriter or an investment adviser ("Foreign Securities Companies") in accordance with the conditions of currently proposed amendment to Rule 12d3–1 under the 1940 Act. Investment Company Act Release No. 17096 (Aug. 3, 1989).

3. The Applicants seek relief from Section 12(d)(3) of the 1940 Act and Rule 12d3–1 thereunder to the extent allowed in the proposed amendments to Rule 12d3–1. The proposed amendments to Rule 12d3–1 would, among other things, facilitate the acquisition by registered investment companies of equity securities issued by Foreign Securities Companies.

Applicants' Legal Analysis

1. Section 12(d)(3) of the 1940 Act generally prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser. Rule 12d3–1 under the 1940 Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the Rule.

2. Paragraph (b)(4) of Rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Certain equity securities issued outside the United States can now qualify as margin securities under recent amendments to Regulation T, including equity securities

appearing on the Board of Governors' List of Foreign Margin Stocks. However, the "margin security" requirements, notwithstanding the Regulation T amendments, currently bar investment companies from acquiring equity securities of many foreign issuers engaged in securities-related businesses.

3. Proposed amended Rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of Foreign Securities Companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." The Applicants' proposed investments in securities issued by Foreign Securities Companies would meet the conditions in proposed amended Rule 12d3–1 and would also be consistent with the Applicants' investment objectives and policies.

Applicants' Condition

The Applicants agree that the following condition may be imposed in any order granting the relief requested:

The Applicants will comply with the provisions of the proposed amendments to Rule 12d3–1 [Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug 11, 1989)], and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–20457 Filed 8–26–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CCGD8 91–20]

Cancellation of the Public Hearing Concerning the Proposed Barge Mooring Facility Mile 151.7 GIWW, Gulf Shores, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing cancellation.

SUMMARY: Notice is hereby given of the cancellation of a public hearing that was to be held by the Commander, Eighth Coast Guard District and the U.S. Army Corps of Engineers, at Gulf Shores, Alabama, Tuesday, September 3, 1991. (See 56 FR 37251 dated August 5, 1991). The purpose of the hearing was to provide an opportunity to all interested persons to present data, views and comments orally or in writing concerning a proposal to moor barges along the Gulf Intracoastal Waterway Mile Mark 151.7, Gulf Shores, Alabama. The company which had requested a permit for this proposal has withdrawn its request.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, Tel. (504) 589–4686.

Dated: August 13, 1991.

J. M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 91–20520 Filed 8–26–91; 8:45 am]

BILLING CODE 4910–14–M

[C60 91–043]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on October 17, 1991, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York harbor.
4. Update on Vessel Traffic Service.
5. Topics from the floor.
6. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J. E. Bussey, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 333 Third floor, Governors Island, New York, NY 10004–5070; or by calling (212) 668–7429.

Dated: August 21, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port New York, NYHTMAC Executive Director.

[FR Doc. 91–20521 Filed 8–26–91; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review North Las Vegas Air Terminal (VGT), North Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice or review: correction.

SUMMARY: This notice corrects an error in the effective start date of the Federal Aviation Administration's review of the proposed noise compatibility program for North Las Vegas Air Terminal that was published in the **Federal Register** on Wednesday, August 14, 1991. The correct effective date of the start of FAA's review is August 2, 1991. The end of the public comment period will remain October 1, 1991. The proposed Noise Compatibility Program will be approved or disapproved on or before January 29, 1992.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone 415/876–2779.

Issued in Hawthorne, California on August 16, 1991.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 91–20495 Filed 8–26–91; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Air Carrier/General Aviation Maintenance Subcommittee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Air Carrier/General Aviation Maintenance Subcommittee.

SUMMARY: Notice is given of the establishment of an Air Carrier/General Aviation Maintenance Subcommittee under the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. White, Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Flight Standards Service (AFS-2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8237; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, including aircraft certification. The committee held its first meeting at Baltimore, MD, on May 23, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

Under the procedures adopted by the full committee, each subcommittee meeting is open to the public, except as authorized in section 10(d) of the Federal Advisory Committee Act. Also, notice is given beforehand of the subcommittee meeting agenda. A subcommittee may form working groups made up of experts from those having an interest in an issue to do tasks assigned to the subcommittee. Working group meetings need not be open to the public. This is because working groups must bring their work product back to the subcommittee for full, open, and substantive discussion, and may not communicate directly to the FAA. The subcommittee may: (1) Accept a working group work product and send it directly to the FAA; (2) Modify the work product and send it directly to the FAA; or (3) Return the work product to the working group with instructions for further activity. Thus, while the functions of a subcommittee are solely advisory, they create a framework within which interested parties may negotiate proposed or final rules and present their consensus to the FAA for action. The more complete these products, the more likely they are to be accepted by the FAA without change and formally published as proposed or final rules. The activities of the Aviation Rulemaking Advisory Committee, and its subcommittees, are consistent with the newly enacted Negotiated Rulemaking Act of 1990 (Pub. L. 101-648).

The Air Carrier/General Aviation Maintenance Subcommittee will provide advice and recommendations to the Director, Flight Standards Service, regarding mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR). The membership of the Air Carrier/General Aviation Maintenance Subcommittee consists solely of the following members of the Aviation Rulemaking Advisory Committee:

- Aeronautical Repair Station Association (ARSA)
- Aerospace Industries Association (AIA)
- Air Line Pilots Association (ALPA)
- Air Transport Association of America (ATA)
- Aircraft Electronics Association (AEA)
- Aircraft Owners & Pilots Association (AOPA)
- Allied Pilots Association (APA)
- Association Europenne des Constructeurs Material Aerospatial (AECMA)
- Association of Air Medical Services (AAMS)
- Association of European Airlines
- Aviation Technician Education Council (ATEC)
- Boeing Commercial Airplane Group
- Experimental Aircraft Association (EAA)
- Flight Safety Foundation (FSF)
- General Aviation Manufacturers Association (GAMA)
- Helicopter Association International (HAI)
- International Association of Machinists and Aerospace Workers
- Joint Aviation Authorities (JAA)
- McDonnell Douglas
- National Air Carrier Association, Inc. (NACA)
- National Air Transportation Association, Inc. (NATA)
- National Association of Trade and Technical Schools (NATTS)
- National Business Aircraft Association, Inc. (NBAA)
- Professional Aviation Maintenance Association (PAMA)
- Public Citizen
- Regional Airline Association (RAA)
- Transport Canada
- United States Parachute Association (USPA)
- University Aviation Association

Notices establishing five Air Carrier/General Aviation Maintenance Subcommittee working groups (the Improved Airworthiness Communications; Weight and Balance; part 65; SFAR 36; and Maintenance Recordkeeping Requirements Working Groups) are published elsewhere in this issue of the **Federal Register**. The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington, DC, on August 20, 1991.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-20489 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier/General Aviation Maintenance Subcommittee; Improved Airworthiness Communications Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Improved Airworthiness Communications Working Group.

SUMMARY: Notice is given of the establishment of an Improved Airworthiness Communications Working Group by the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation

Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. White, Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Flight Standards Service (AFS-2), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-8237; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier/General Aviation Maintenance Subcommittee was established at that meeting to provide advice and recommendations to the Director, Flight Standards Service, regarding mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR). At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Improved Airworthiness Communications Working Group.

Specifically, the working group's task is the following:

Development of an NPRM to address the reporting requirements of §§ 121.703 and 121.705 and similar rules of parts 125, 135, and 145 of the FAR. The reason for this amendment is to consider the aging aircraft structural reporting requirements and to establish a more realistic and useful data base that are required for assessing today's aircraft and engine reliability. This may lead to the development of a new § 121.704.

The Improved Airworthiness Communications Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier/General Aviation Maintenance Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Improved Airworthiness Communications Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 20, 1991.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-20490 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier/General Aviation Maintenance Subcommittee; Part 65 Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of part 65 Working Group.

SUMMARY: Notice is given of the establishment of a part 65 Working Group by the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. White, Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Flight Standards Service (AFS-2), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-8237; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier/General Aviation Maintenance Subcommittee was established at that meeting to provide advice and recommendations to the Director, Flight Standards Service, regarding mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR). At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the part 65 Working Group.

Specifically, the working group's task is the following:

Development of a notice of proposed rulemaking for part 65 of the FAR. Part 65 has not been revised for over 20 years, and changes in the knowledge, skills, and abilities required for today's aviation maintenance technicians have advanced significantly.

The part 65 Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier/General Aviation Maintenance Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the part 65 Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public

announcement of working group meetings will be made.

Issued in Washington, DC, on August 20, 1991.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-20491 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier/General Aviation Maintenance Subcommittee; Weight and Balance Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Weight and Balance Working Group.

SUMMARY: Notice is given of the establishment of a Weight and Balance Working Group by the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. White, Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Flight Standards Service (AFS-2), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-8237; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier/General Aviation Maintenance Subcommittee was established at that meeting to provide advice and recommendations to the Director, Flight Standards Service, regarding mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR). At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Weight and Balance Working Group.

Specifically, the working group's task is the following:

Review the existing methods of establishing current standard weights for passengers, carry-on baggage, and checked baggage to determine the need to revise Advisory Circular (AC) 120-27B, Aircraft Weight and Balance Control.

The Weight and Balance Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier/General Aviation Maintenance Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Weight and Balance Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC on August 20, 1991.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-20492 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier/General Aviation Maintenance Subcommittee; Maintenance Recordkeeping Requirements Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Maintenance Recordkeeping Requirements Working Group.

SUMMARY: Notice is given of the establishment of a Maintenance Recordkeeping Requirements Working Group by the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. White, Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Flight Standards Service (AFS-2), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-8237; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier/General Aviation Maintenance Subcommittee was established at that meeting to provide advice and recommendations to the Director, Flight Standards Service, regarding mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR). At its meeting on July 17, 1991 (56 FR 29747, June 28, 1991), the subcommittee established the Maintenance Recordkeeping Requirements Working Group.

Specifically, the working group's task is the following:

Development of an advisory circular that will address the recordkeeping requirements of the present FAR and development of an NPRM that may include additional items and utilize the present state-of-the-art for recording and retention of records.

The Maintenance Recordkeeping Requirements Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier/General Aviation Maintenance Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should

write the person listed under the caption "FOR FURTHER INFORMATION CONTACT" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Maintenance Recordkeeping Requirements Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 20, 1991.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-20493 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier/General Aviation Maintenance Subcommittee; SFAR 36 Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of SFAR 36 Working Group.

SUMMARY: Notice is given of the establishment of a SFAR 36 Working Group by the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. White, Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Flight Standards Service (AFS-2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8237; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier/General Aviation Maintenance Subcommittee was established at that meeting to provide advice and recommendations to the Director, Flight Standards Service, regarding mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR).

Specifically, the working group's task is the following:

To develop an advisory circular to address the privileges and limitations of air carriers and repair stations to perform major repairs under SFAR 36.

The SFAR 36 Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier/General Aviation Maintenance Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "FOR FURTHER INFORMATION CONTACT" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the SFAR 36 Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 20, 1991.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-20494 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation System Capacity Advisory Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Aviation Systems Capacity Advisory Committee to be held on Wednesday and Thursday, September 4 and 5, 1991. The meeting will take place at 10 a.m. in the MacCracken Room, 10th Floor, FAA, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is: FAA Response to the Recommendations of the Advisory Committee.

Attendance is open to the interested public but limited to space available. With the approval of the committee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. James McMahon, FAA, Office of System Capacity and Requirements, (202) 267-7425.

Any member of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on August 21, 1991.

James A. McMahon,

Acting Director, Office of System Capacity and Requirements.

[FR Doc. 91-20497 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-06-IP-No. 2]

Kolcraft Enterprises, Inc., Denial of Petition for Determination of Inconsequential Noncompliance

This notice denies the petition by Kolcraft Enterprises, Inc. (Kolcraft) of Chicago, Illinois, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems." The basis of

the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on February 19, 1991 and an opportunity afforded for comment (56 FR 6705).

Paragraph S5.7 of FMVSS No. 213 requires that each material used in a child restraint system shall conform to the requirements of section 4 of FMVSS No. 302, "Flammability of Interior Materials." FMVSS No. 302 specifies the burn resistance requirements for materials used in the occupant compartments of motor vehicles. S4.2.1 and S4.3(a) of FMVSS No. 302 specify that any material that does not adhere to other materials at every point of contact, when tested separately, shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute. Similarly, S4.2.2 and S4.3(a) specify that any material that adheres to other material(s) at every point of contact shall meet this burn rate requirement when tested as a composite with the other material(s).

Kolcraft's Perfect Fitt child safety seat does not comply with the burn resistance requirements of FMVSS No. 302 and therefore does not comply with FMVSS No. 213. The noncompliance involves foam pads which Kolcraft used in some of its Perfect Fitt child seats. Because the foam pads do not adhere to other materials at every point of contact, they must be tested separately from the other materials. When tested under this condition, the pads did not meet the requirements of the standard.

Kolcraft supported its petition with the following:

"1. Kolcraft believes * * * the particular design of the Perfect Fitt seat cushion satisfies the overall safety objectives of FMVSS Nos. 213 and 302, and therefore, this noncompliance should be deemed inconsequential as it relates to motor vehicle safety.

"2. The bottom seat cushion of the Perfect Fitt [the cushion that was in noncompliance with FMVSS 302 and 213] consists of a urethane foam pad totally encased front and back and on all sides in burn-resistant materials. The underside of the cushion is covered in durable plastic. The plastic and laminated fabric are sealed on all sides, creating a permanent envelope for the foam pad. This outer envelope is highly burn-resistant. Burn-tests performed in May 1990 by the Commercial Testing Company pursuant to NHTSA's direction show that the plastic and fabric outer materials of the Perfect Fitt fall well within the flammability requirements of Standard No. 302. In fact, the laminated fabric self-extinguished before reaching the timing zone.

"3. Furthermore, when the Perfect Fitt seat cushion is burn-tested as a composite, it consistently meets NHTSA's flammability standard. As part of its quality control program, Kolcraft routinely performs burn-tests on the completed seat cushion, using the guidelines of FMVSS 302. In all cases, the result is the same: The outer shell of the seat cushion self-extinguishes upon burning beyond direct contact with the open flame.

"4. Thus, the outer envelope of the Perfect Fitt Seat cushion serves to extinguish any fire before it reaches the foam pad. Even in the seemingly impossible event that a fire were to start on the inside of the seat cushion and burn outward, the self-extinguishing properties of the outer material would provide protection. Given the particular design of the Perfect Fitt seat cushion, testing it as a composite to determine compliance with Standard No. 302 more accurately reflects real world conditions than testing it as two separate materials.

"5. Pursuant to the burn-testing procedures of Standard No. 302, compliance in this case essentially turns on the technical fact of whether the outer material of the seat cushion adheres at every point of contact to the underlying foam pad. Thus, if Kolcraft were to glue the foam pad to the outer fabric so that every point of contact between the two materials were to adhere, the seat cushion would be considered a composite and, as we have shown above, would meet the flammability requirement of Standard 302. This cannot be the intended result of Standard 302 since gluing the foam to the laminated fabric would provide no additional safety benefit whatsoever.

"(I)t is erroneous to focus on whether the two materials adhere at all points of contact. Instead, NHTSA should examine what will happen to the Perfect Fitt seat cushion under real world conditions."

No comments were received on the petition.

Kolcraft has based the arguments of inconsequentiality quoted above on the assumption that the integrity of the seat will be preserved throughout its life. But NHTSA is concerned about the potential consequences when the foam itself is exposed in the interior of a vehicle. Petitioner offered no evidence that the Perfect Fitt outer seat covering would not rip or tear during use which would thereby expose the noncompliant foam to the possibility of contact with fire. The noncompliant foam would burn faster than compliant foam, thereby increasing the risk of injury to the child in case of a fire. The exposure of foam in a child seat is a real world occurrence; NHTSA found 21 reports in its data base of incidents of ripping and tearing of seat padding in child safety seats.

The flammability requirements of FMVSS No. 302 were created to reduce the deaths and injuries to occupants in motor vehicle fires, especially those originating in the interior of the vehicle. The purpose of extending FMVSS No. 302 to child safety seats was to assure the same level of protection to a child using these seats as is extended to a person seated directly on a motor vehicle seat. If foam is exposed when the seat covering tears, rips, or simply wears out, it is vital that the foam conform to FMVSS No. 302 so that the child will be protected. The fact that the materials are not glued or otherwise fastened at all points increased the fire danger if the outer materials are ripped.

For the foregoing reasons, petitioner has not met its burden of persuasion that the noncompliance described is inconsequential as it relates to motor vehicle safety, and its petition is hereby denied.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: August 21, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-20532 Filed 8-26-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0091.

Form Number: 1040X.

Type of Review: Revision.

Title: Amended U.S. Individual Income Tax Return.

Description: Form 1040X is used by individuals to claim a refund of income taxes, pay additional income taxes, or designate a dollar to a presidential election campaign fund. The information is needed to help verify that the individual has correctly figured his or her own income tax. Form 1040X Payment-Voucher is used to process payments received with Form 1040X.

Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations.

Estimated Number or Respondents: 2,369,000.

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping: 1 hour, 12 minutes. Learning about the law or the form: 20 minutes. Preparing the form: 1 hour, 11 minutes. Copying, assembling, and sending the form to IRS: 35 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 7,835,520 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–20461 Filed 8–26–91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

August 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0940.

Form Number: None.

Type of Review: Extension.

Title: Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements.

Description: The regulations liberalize the procedure by which the state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and delete the requirement to file certain supplemental capital expenditure statements.

Respondents: State of local governments, small businesses or organizations.

Estimated Number of Recordkeepers: 10,000.

Estimated Burden Hours Per Recordkeeper: 6 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping Burden: 1,000 hours.

OMB Number: 1545–1010.

Form Number: 1120–RIC.

Type of Review: Revision.

Title: U.S. Income Tax Return for Regulated Investment Companies.

Description: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 3,277.

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping: 52 hours, 8 minutes. Learning about the law: 15 hours, 45 minutes. Preparing the form: 31 hours, 16 minutes. Copying, assembling, and sending the form to IRS: 4 hours, 1 minute.

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 338,055 hours.

OMB Number: 1545–1069.

Form Number: 1099–R.

Type of Review: Extension.

Title: Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans.

Description: The IRS needs this information to insure companies with sections 401(k), 401(m), and 4979 of the Internal Revenue Code. Certain additional taxes may be imposed if sections 401(k) and 401(m) are not complied with.

Respondents: State or local governments, farms, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 5,500.

Estimated Burden Hours Per Response/Recordkeeping: 2 hrs. 6 mins.

Frequency of Response: Annually; Once for some employers.

Estimated Total Recordkeeping/Reporting Burden: 1,060,000 hours.

OMB Number: 1545–1111.

Form Number: None.

Type of Review: Reinstatement.

Title: Opinion Survey of Taxpayers Contacted by the IRS Examination Function.

Description: Information gathering for operation and program evaluation: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS Examination Function, to identify possible areas of program improvement, and thereby improve the effectiveness of Examination activities.

Respondents: Individuals of households.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–20462 Filed 8–26–91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

August 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0127.

Form Number: FFIEC 001, 006.

Type of Review: Extension.

Title: (MA)—Annual Report of Trust Assets/Special Report—Trust Department Activities/Interagency Survey of Corporate Foreign Fiduciary/ Activities.

Description: Collected data are needed to determine types, extent, and financial viability of fiduciary activities. Data are used to analyze, supervise, and examine bank fiduciary activities. Analytical reports are prepared from the data. National banks authorized to exercise fiduciary powers are the affected public.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 1,700.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 14,575 hours.

Clearance Officer: John Ference (202) 874-5090; Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget; room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Mancgement Officer.

[FR Doc. 91-20463 Filed 8-26-91; 8:45 am]

BILLING CODE 4810-33-M.

Sunshine Act Meetings

Federal Register

Vol. 56, No. 166

Tuesday, August 27, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 29, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492–6800.

Dated: August 21, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–20590 Filed 8–23–91; 10:10 am]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, September 3, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–20670 Filed 8–23–91; 3:21 pm]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, August 30, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–20597 Filed 8–23–91; 10:40 am]

BILLING CODE 6210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–91–26]

TIME AND DATE: September 10, 1991 at 9:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda of future meetings.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. No. 731–TA–474, 475 (Final) (Chrome-plated Lug Nuts from the People's Republic of China and Taiwan)—briefing and vote.
6. Inv. No. 701–TA–308 (Preliminary) and 731–TA–526 (Preliminary) (Bulk Ibuprofen from India)—briefing and vote.
7. Inv. No. 731–TA–470 (Final) (Silicon Metal from Argentina)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: August 21, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–20612 Filed 8–23–91; 12:36 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–91–27]

TIME AND DATE: September 17, 1991 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda of future meetings.
2. Minutes.
3. Ratification List
4. Petitions and complaints:
   Certain Computer System State Save/Restore Software and Associated Backup Power Supplies for Use in Power Outages (Docket Number 1638).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: August 21, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–20615 Filed 8–23–91; 12:36 pm]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 26, September 2, 9, and 16, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 26

Wednesday, August 28

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 2—Tentative

There are no meetings scheduled for the Week of September 2.

Week of September 9—Tentative

Monday, September 9

2:00 p.m.

Briefing on IIT Report on GE-Wilmington Incident (Public Meeting)

Wednesday, September 11

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 16—Tentative

There are no meetings scheduled for the Week of September 16.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: August 23, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-20665 Filed 8-23-91; 2:26 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 56, No. 166
Tuesday, August 27, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL ELECTION COMMISSION

[Notice 1991-11]

11 CFR Parts 106, 9005, 9007, 9012, 9034, 9036, 9038 and 9039

Public Financing of Presidential Primary and General Election Candidates

Correction

In rule document 91-17610 beginning on page 35898 in the issue of Monday, July 29, 1991, make the following corrections:

1. On page 35900, in the second column, in paragraph 4, in the eighth line after, "call" insert "are".

2. On page 35908, in the 3rd column, in the 27th line, "no" should read "No".

§ 9005.1 [Corrected]

3. On page 35923, in the first column, in § 9005.1(a), in the seventh line, following the word "eligibility" remove "tb".

§ 9007.1 [Corrected]

4. On page 35924, in the second column, § 9007.1(b), in the eighth line, "weeks," should read "weeks' ".

5. On the same page, in the third column, in the second line, "weeks," should read "weeks' ".

6. On page 35928, in the second column, in the authority citation for Part 9012, " removed ",12".

§ 9034.5 [Corrected]

7. On page 35938, in the first column, in § 9034.5(g)(2), in the third line from the top of the page, "met" should read "net".

§ 9034.8 [Corrected]

8. On page 35939, in the first column, in § 9034.8(b)(1), in the fifth line from the bottom of the page, "establish" was misspelled.

9. On the same page, in the second column, in § 9034.8(c)(1), in the seventh line, "agreement" was misspelled.

§ 9036.3 [Corrected]

10. On page 35943, in the second column, in § 9036.3, in the heading, remove "of".

§ 9038.1 [Corrected]

11. On page 35945, in the third column, in § 9038.1(b)(1)(ii), in the first line, "Personnel" should read "personnel".

12. On page 35946, in the second column, in § 9038.1(c)(2), in the fifth line, "report" should read "report,".

§ 9039.3 [Corrected]

13. On page 35950, in the second column, in § 9039.3(b)(2)(v), in first line,"order; 1", should read "order".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 130, 131, 133, 135, 136, 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163, 164, 166, 168, and 169

[Docket No. 90N-361]

RIN 0905-AD05

Food Labeling; Declaration of Ingredients

Correction

In proposed rule document 91-14760 beginning on page 28592 in the issue of Friday, June 21, 1991, make the following corrections:

1. On page 28617, in the first column, in the fourth full paragraph, in the sixth line, "macronutrients" is misspelled.

2. On page 28618, in the first column, Reference 26 should have begun on a separate line.

§ 133.103 [Corrected]

3. On page 28622, in the second column, in § 133.103, in the ninth line, "milkfat" should read "milk fat".

§ 133.104 [Corrected]

4. On page 28622, in the second column, in § 133.104, in the eighth line, "it is cured" was printed incorrectly.

5. On page 28628, in the first column, in paragraph 133, the second line should read, "revising paragraph (a) to read as follows:"

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas # 2518 and # 2519]

Minnesota (With Contiguous Counties in Wisconsin) Declaration of Disaster Loan Area

Correction

In notice document 91-19078 appearing on page 38165 in the issue of Monday, August 12, 1991, make the following corrections:

1. On the same page, in the heading, the docket numbers should appear as shown above.

2. On the same page, in the first column, in the first paragraph, in the fifth line "Tremplealeau" should read "Trempealeau".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-06; Notice 5]

RIN 2127-AA 13

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Passenger Car Brake Systems

Correction

In proposed rule document 91-15560, beginning on page 30528, in the issue of Wednesday, July 3, 1991, make the following corrections:

1. On page 30531, in the second column, in the last paragraph, in the first line, "site" should read "step".

2. On page 30537, in the first column, in the last paragraph, in the second to the last line, "percent" should read "present".

§ 571.135 [Corrected]

3. Section 571.135 is corrected as follows:

a. On page 30545, in the second column, in S7.1.3(i), "56.3.4" should read S6.3.4".

b. On page 30546, in the first column, in S7.2.4(b), beginning in the fourth line remove the phrase "or the front axle locking before or simultaneously with the rear axle,".

c. On page 30547, in the second column, in S7.4.4(f), the equation should appear as follows:

(f) * * *

$$z = \frac{T_1 + T_2}{P}$$

where z=braking ratio at a given front line pressure;

T_1, T_2=Braking forces at the front and rear axles,

respectively, corresponding to the same front brake line pressure, and

P=total vehicle weight.

* * * * *

d. On the same page, in the third column, in S7.4.4(g), the equations should appear as follows:

(g) * * *

$$f_1 = \frac{T_1}{P_1 + zhP/E}$$

$$f_2 = \frac{T_2}{P_2 - zhP/E}$$

where: f_i=adhesion utilized by axle i

T_i=braking force at axle i (from (e))

P_i=static weight on axle i

z=braking ratio (from (f))

h=height of center of gravity of the vehicle

* * * * *

4. On page 30548, in the third column, in S7.5.3(b), "0.10U" should read "0.10V".

5. On page 30549, in the first column, in S7.7.4 (a) and (b), and in the second column, in S7.8.3(b), "$\geq$" should read "$\leq$".

6. On page 30552, in the first column, in S7.14.3(a)(1), "$\leq$" should read "$\geq$".

7. On the same page, in the second column, in S7.15.4(b), in the second line, in the equation, "$\times$" should read "+".

BILLING CODE 1505-01-D

federal register

Tuesday
August 27, 1991

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1930, 1944, 1951, and 1965

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1930, 1944, 1951, and 1965

RIN 0575-AA49

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations governing the management and supervision of FmHA Multiple Family Housing Loan and Grant Recipients. This action would incorporate clarifications and desired policy statements. The intended effect of the revision is to update the regulation and promote program efficiency.

DATE: Comments must be received on or before October 28, 1991.

ADDRESS: Send written comments in duplicate to the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250, Telephone: (202) 382-9725. All written comments will be available for public inspection during normal working hours.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bill Daniel, Senior Loan Officer, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, room 5321 South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250, Telephone: (202) 382-1619.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

La Verne Ausman, Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

This action is proposed to provide a general update to the regulation and to incorporate clarifications of policy previously issued in the form of Agency Administrative Notices. It is also in response to an evolutionary force to keep pace with current needs for policy clarification and regulatory language, automation, and economic impact changes on tenants and property owners.

General changes consist of basic editorial corrections and changing the term "market rent" to "note rate rent" throughout the regulation. The latter change is made to distinguish between the rent established to support a project budget that includes unsubsidized debt service from that rent in a community that reflects the market forces of the local economy. This change is proposed to eliminate confusion of terminology brought about by the establishment of special servicing market rents in a previous change.

Other general changes provide for application of appropriate rural rental housing regulatory requirements to labor housing projects where referenced. Further, distinction is made throughout the proposed rule between on-farm rent-free labor housing and rental type labor housing. A new form title "Multiple Family Housing Project Budget" for Form FmHA 1930-7 is used throughout. The listings of prohibited forms of discrimination are revised to reflect changes brought forth by the Fair Housing Amendments Act of 1988. References to fidelity bonds are changed to fidelity coverage.

Citations of affirmative fair housing statutes throughout the regulatory text have been updated to reflect current statute titles.

The Agency is reviewing its current restrictions on investment of project reserve account funds. Currently, funds in the reserve account, not immediately needed for authorized purposes, may be invested in savings certificates insured by a Federal institution, or invested in readily marketable obligations of the United States Treasury Department. The Agency invites alternative provisions that would achieve the same level of liquidity and security of project reserve funds. One concept the Agency could consider is to permit investment of such funds in the name of the borrower (entity) in tax exempt money market funds that are restricted to tax exempt United States Treasury securities. The broker of such funds must be a member of the Securities and Exchange Commission. This arrangement would have the benefit of reducing income tax burden on interest earned from reserve funds. This rule does not include this idea as proposed language in the text, but the Agency holds open the option to include it as a change in the final rule after considering any public comment on the idea.

The Agency calls the public's attention to several proposed major additions and changes of policy or practice. These are discussed sequentially as they occur throughout the proposed text.

At § 1930.122, the Agency proposes to replace monthly project budget reports with quarterly reports. This is believed to be more effective for borrower and Agency alike and less burdensome for both.

In Exhibit B:

Throughout paragraph II, the definitions of Adjusted Annual Income, Annual Income, Net Family Assets and Resident Assistant are revised to incorporate changes of wording for the same definitions used by the Department of Housing and Urban Development (HUD). The Housing and Urban-Rural Recovery Act of 1983 requires the Departments of HUD and Agriculture to use the same meanings of the definitions.

At paragraph V. E. 1., the Agency is clarifying that the apartment unit occupied by a site manager is either revenue producing or non-revenue producing. If it is revenue producing, rent contribution will be determined according to preparation of a tenant certification. If it is non-revenue producing, a tenant certification will not be required.

At paragraph V. G., the Agency is introducing guidelines and requirements for supplemental services such as vendor provided laundry equipment,

vending machines and commissary stores. There is an increasing trend for project owners to contract for such services with increasing demand on the Agency for guidance in this matter.

At paragraph VI. B. 2., the Agency is reconsidering the discussion about occupancy standards. The Agency has reworded this paragraph to convey the intent that the numerical standard is a guideline for general use. A project owner will be responsible for establishing occupancy standards that allow additional persons, such as a newborn baby, to occupy when that person's occupancy will not cause an overcrowded condition (safety, sanitation and deterioration concerns) for the unit or fewer persons when it is economically vital to the success of the project (use of subsidy notwithstanding) to rent the unit to avoid a vacancy. The Agency invites comment including any recommendation and rationale for alternative language that otherwise meets the Agency's stated occupancy policy.

In recent years some projects have experienced difficulty in marketing units for various reasons. The Agency proposes to add paragraph VI. H. to describe various types of marketing incentives that would be permitted and the conditions for allowing such incentives.

A perennial question concerns what constitutes a substantial change of income that would be cause for recertification of income before expiration of a current tenant certification. FmHA staff, borrowers, tenants, rental agents and the Departmental Office of Inspector General have various viewpoints ranging from $1.00 to greater amounts. The Agency proposes at paragraph VII. F. 3. to declare that a change of $20.00 to $29.99 of gross income or adjustments to income per month may be reported at a tenant's or cooperative member's option for recertification, but a $30.00 or more change of same shall require reporting and recertification. Financial impact on tenants and the use of rental assistance by decreases of income and income adjustments were taken into consideration as well as increases to the same in arriving at these monetary thresholds. An additional consideration in arriving at the monetary thresholds is the anticipated reduction in frequency of administrative burden on borrower and FmHA staff to process recertifications. The Agency invites comment on any alternative viewpoint together with rationale for any recommendations for any differing language.

Paragraph IX. D. is added to disclose to borrowers the provision and responsibility for late fees and the opportunity for appeal of the assessment of late fees on overdue loan payments. These provisions affect only borrowers with a loan that is accounted for in the Agency's Predetermined Amortization Schedule System (PASS).

At paragraph XII. A. 8., the Agency proposes to add the provision that a FmHA budget approval official may challenge what appears to be an excessive planned operating expense and require reduction of the expense. If reduction of the cost item is not mutually resolvable, the budget approval official could further require competitive bidding for the item or service to be provided. Inclusion of this item in the rule is supported by findings of the Department's Office of Inspector General and subsequent conviction of guilty parties.

Current regulations provide for payment of return on investment (ROI) once each year at the end of a year. Borrowers contend that it is necessary to close out their financial records in the days or weeks immediately following the close of an operating year to determine the ROI for the fiscal year just completed. Taken literally, the current regulation does not permit this. The intent of the Agency is compatible with the borrower contention. Consequently, paragraph XII. C. 1. a. is revised to clarify this intent.

However, at paragraph XII. C. 3., it is proposed that if the borrower was operating under a servicing (workout) plan and/or was using special market rate (SMR) rent during the operating year that called for reduced loan payment to FmHA to reduce cash requirements, the borrower will be required to forego and never recoup the ROI for the budget year that such plans or reduced rent rates were in effect.

The Agency has long held to the idea that funds of separate projects should be kept in separate bank accounts and not commingled. Concern for accountability and funds control have been the reasons for this policy. In recent years, borrowers and management agents have explained to the Agency how, with the use of automated systems, accountability and funds control can be maintained in the spirit of the current policy, while economic advantages to the project can be realized through such means as higher rate of return on combined deposit of reserve funds and less cost in maintaining combined records. Two scenarios have emerged in how all or part of this can be done. The first involves separate project bank accounts linked to a common funds disbursement account. The second is a combined bank account for two or more projects but with accounting for separate projects that can be reconciled as to the individual accounts and to the total account at a moments notice. At paragraph XIII.B.1.d., the Agency proposes that all project funds will be accounted for by adequate and clear accounting methods and practices that otherwise maintain proprietary identity of such funds. The Agency would like the public to express reasons for or against the proposal rather than merely state opinion. Illustrations to support the reasons will be appreciated.

The Agency's current fidelity bond requirements have become antiquated in recent years due to factors of multiple ownership and/or management and changes in the insurance industry. The current requirements have been geared more along the lines of sole project needs. As applied to multiple projects operated under one "umbrella," coverage requirements have become unnecessarily high. An impromptu survey of one-third of the FmHA State Offices in November 1988, revealed that losses covered by fidelity bonds or policies were generally less than $20,000 during the July 1985 to November 1988 period, while coverage was getting into the hundreds of thousands of dollars and in some cases millions of dollars. The result has either been high cost for coverage or inability to obtain coverage. At paragraph XV A, the Agency proposes a major departure from the current requirements. The proposed requirements are based on current knowledge used by the insurance industry and Agency experience.

Paragraph XVI is added to establish policy and guidance in the automation of FmHA forms and formats associated with the Multiple Family Housing (MFH) program.

During Combined Assessment Reviews of the MFH program at State and District Office level, concern about tracking of reserve funds, maintenance of waiting lists and use of equal opportunity and FmHA logos on project signs have been recurring themes. Exhibits B–10 through B–14 are proposed to augment the regulation as a means to foster uniformity of practice in these areas.

In Exhibit C:

The Agency has determined that it needs to revise its processing procedure for review and approval of rent (or occupancy charge) change requests. At paragraphs IV.B., C., and D, the agency proposes a specific process whereby the posting of notice of a rent or occupancy charge change is either brought to a point of total approval or rejection within certain timeframes.

The Agency has encountered some instances where a Section 515 project with HUD Section 8 is disallowed an annual adjustment of rents by HUD, yet the operating budget justifies rents greater than the HUD approved rent levels. The Agency proposes at paragraph VIII.B. (and at paragraph IV.A.2.f of Exhibit B) to permit the FmHA State Director only, the authority to convert the FmHA subsidy plan to permit greater interest credit subsidy provided by FmHA.

The eligibility qualifiers for special servicing market rate rents at paragraph X.A.1.a have been expanded to accommodate a wider range of possible situations where the special rates are needed.

Exhibit D revisions place emphasis on review of energy conservation practices in addition to review of energy conservation measures. The Agency proposes that energy audits be performed by qualified energy auditors.

In response to staff experience and suggestions, the supervisory visit Exhibits F and G have been restructured. Exhibit F is proposed as a supervisory and security inspection preparation exercise. Exhibit G is a revised format for recording factual data and other information obtained through an interview process as well as an observation and check-off process.

In Exhibit H which addresses FmHA provided interest credit subsidy, paragraphs VI.C.2., and 3. are added to clarify Agency policy that interest credit must be cancelled when major damage renders an apartment unit unusable for a period exceeding 60 days.

Following is a discussion of other specific proposed changes to aid the reader review. When comparing this dicusssion to the existing regulation, the reader will find that some proposed text is added and some existing text is renumbered.

1. Section 1930.105(c) is added to exempt on-farm labor housing loans from this regulation as long as the housing is a rent-free benefit to a domestic farmworker and the borrower submits the required annual report.

2. Sections 1930.117(a) is amended to increase emphasis of the District Director's responsibility for supervisory visits, management report review, problem account servicing and maintenance and use of O & M cost databases.

3. Section 1930.117(b) is amended to additionally emphasize the State Director's responsibility that borrowers receive financial counseling and to assist District Directors in developing realistic plans to resolve MFH project problems.

4. Section 1930.117(c) is amended to add account servicing and maintenance and use of an O & M cost database to FmHA State staff responsibilities.

5. Section 1930.119 is amended to increase emphasis of supervisory visits concerning income records verification, budget compliance, providing borrowers with cost estimates of needed repair, follow-up for resolution of deficiencies and permit more frequent visitation when deemed necessary.

6. Section 1930.122 is substantially amended to focus on borrower accounting methods and management reporting. Cash basis accounting may be used by the borrower but accrual basis financial statements will be required. Reports are to relate only to the FmHA financed project. Records will be retained three years. FmHA may authorize a 60 day extension for audit submission.

7. Section 1930.123 is opened to cover Annual Analysis that was previously covered in § 1930.124.

8. Section 1930.124 is redesignated to discuss distribution and review of reports and annual analysis information.

9. In § 1930.125, when changing project designation, a market survey must clearly indicate the original market has changed in addition to showing the present long term marketability of the project. Also documentation will require a summary of any physical modifications and cost feasibility to complete them.

10. Section 1930.134 will require FmHA officials to maintain records according to FmHA Instructions 2033–A and G.

11. Section 1930.137 is amended to state that FmHA follows the provisions of the Administrative Procedures Act when developing public policy unless otherwise directed by statute.

12. Section 1930.143 is amended to clarify the FmHA State Director's delegation authority to the person or position of the District Director.

13. The FmHA Administrator's exception authority at Section 1930.144 is broadened in scope and it permits the Assistant Administrator for Housing to initiate an exception to any requirement of subpart C of 7 CFR part 1930.

14. Section 1930.145 is opened to discuss the Agency's policy for borrower appeals of FmHA decisions.

Exhibit A

15. Exhibit A is amended in paragraph I to reference financial records as books of accounts; paragraph III I is added regarding overage charges; paragraph IV C is modified to add focus to energy conservation practices; and Paragraph VII B is revised to refer to fidelity coverage rather than a specific fidelity bond.

Note: Parallel references to fidelity coverage are made at exhibit B, paragraph XV. A., exhibit B–3, paragraph I. H. and at exhibit B–4, item 13.

Exhibit A–1

16. Paragraphs II. and IV. C. a. are changed to reference an audit program rather than an audit guide. Paragraphs IV. B. 1. and C. 1. c. are amended concerning new audit standards, District Office authority and submission requirements.

Exhibit A–1, Checklist

17. Exhibit A–1 is amended from items 2 through 9 to be in harmony with recent adoption of generally accepted government auditing standards (GAGAS). Corresponding reference changes are made in exhibit A–1 to the Example Audit Review Letter.

Exhibit B

18. At paragraph II, the definitions are listed in alphabetical order. In addition to the parallel changes with HUD's changes mentioned earlier, the definition for Annual Income is amended by adding low-income energy assistance as an exempted income. The definitions for Individuals with Handicap and Disability respectively are removed from within the definition for Elderly (Senior Citizen) and established as independent definitions. References throughout to a numbered definition are changed to a word reference to the definition title.

19. Paragraph III. A. 6. is added and III. F. is amended to further define a borrower's management responsibility.

20. Paragraph IV is amended by clarifying that congregate services are not covered by rental subsidy. Paragraph IV is further amended:

—IV A. 2. f. is added to explain how Plan I/Section 8 RRH loans may change to a Plan II operation.

—IV. C. concerning the Housing Voucher Program

—IV. D. and E. are added to describe State and privately provided subsidy in FmHA projects.

21. Paragraph V is amended:

—V. A. regarding management plan requirements and to require triennial instead of biennial updates (which would coincide with triennial supervisory visits).

—V. D., and E. concerning responsibility and compensation of management agents and site managers.

22. Paragraph VI is amended:

—At the opening paragraph by stating that a pre-occupancy conference should predate marketing activity and receipt of tenant applications.
—VI. A. concerning project sign requirements and community contact for affirmative fair housing outreach.
—VI. B. 1. a. concerning inclusion of net family asset earnings in eligibility income.
—VI. B. 1. i. clarifying legal capacity to enter into a lease agreement.
—VI. B. 1. m. (2) concerning replacement of a tenant lease with one meeting current requirements.
—VI B. 2. h. identifying specific former regulatory occupancy provisions.
—VI. B. 3. emphasizing any criteria or documentation requirements apply uniformly to all applicants.
—VI. B. 4. concerning a non-elderly surviving or remaining member of household.
—VI. B. 5. c. allowing ineligible tenants to remain if the waiting list is empty.
—VI. B. 6. a. is clarified to allow occupancy by ineligible households to fill vacant units.
—VI. C. 1., 2., and 3. concerning the inquiry list and waiting list.
—VI. D. 2. concerning application requirements.
—VI. D. 4. a. concerning delivery of a rejection letter to an applicant for tenancy.
—VI. E. to reference gross income instead of adjusted income of tenants in tax credit situations.
—VI. F. 1. concerning tenant or member selection.

23. The following additions are made to Paragraph VI:

—VI. B. 1. h. (2), and (3) concerning tenant profile in family and elderly housing.
—VI. B. 2. a. describing owner's responsibility to establish occupancy standards.
—VI. B. 2. d. describing guidelines to achieve the occupancy policy objective.
—VI. B. 2. e. concerning conditions for temporary occupancy by a non-handicapped household in an apartment unit with special handicap design features.
—VI. C. 3. g. describing homeless and financial hardship priorities in Section 8 subsidized units.

Note: These priorities are also added at paragraph VI. F. 3.

—VI. F. 6. clarifying differences in tenant selection criteria for farm labor housing and rural rental housing.

24. Paragraph VII is amended:

—VII concerning applicant information at time of certification.
—VII. A. concerning use of Form FmHA 1910–5, "Request for Verification of Employment" for income and employment verification.
—VII. C. concerning income/employment verification for farm labor housing tenants.
—VII. E. concerning reference to Housing Voucher requirements.
—VII. F. 1., 2., and 5. b. concerning tenant certification completion and submission requirements.
—VII. F. 6. a. and b. clarifying a tenant's and borrower's responsibility in the verification/certification process.
—VII. F. 6. c. concerning the borrower's responsibility for paying overage.
—VII. F. 6. c., and d. to use the term termination instead of eviction.

25. The following additions to Paragraph VII are made:

—VII. F. 4. concerning tenant certification form modifications for certain situations.
—VII. F. 9. describing that a reasonable charge by a State agency shall be a project expense.
—VII. F. 10. describing emergency certification/recertification procedure.
—VII. G. to describe the process for certifying a tenant on a day other than the first of a month.

26. Paragraph VIII is amended:

—VIII. A. 1. to clarify a tenant's right to recertify for subsequent one year periods.
—VIII. A. 8. to indicate HUD form(s) other than HUD Form 50059 to certify Section 8 tenants.
—VIII. B. 2. concerning non-renewal of a lease except in certain situations.
—VIII. B. 4. and 5. (added) to provide lease clauses for tenants occupying Plan I projects approved before and after August 1, 1968 respectively.
—VIII. D. 19. to clarify when HUD or FmHA tenant grievance and appeals procedures apply.
—VIII. G. 6. by deleting the date of October 1, 1987.
—VIII. H. 1. by adding the adjective "net" to the words "tenant contribution." This correlates regulatory and Form FmHA 1944–8 "Tenant Certification" terminology.

27. Additions are made to Paragraph VIII:

—VIII. B. 8. to provide a lease clause stating that use or possession of an illegal controlled substance is a material violation of the lease and is cause for termination of occupancy.
—VIII. C. to provide a special lease clause for a non-handicapped tenant household using a designated handicap unit.
—VIII. G. 6. a. (3) prohibiting an extra monthly charge for pets.
—VIII. J. to state FmHA requirements for leases used by Section 8 tenants.

28. Paragraph IX is amended in its title by adding the subject of account servicing. This amendment is expanded throughout paragraph IX.

29. Paragraph X. A. is amended concerning long-term maintenance and the annual budget and X. D. is amended to emphasize long-term replacement (curable depreciation) maintenance.

30. Additions made to Paragraph XII:

—XII. A. 5. to identify the priority order of budget requirements.
—XII. A. 6. to identify that project funds may not be used for borrower organizational expenses.
—XII. A. 7. to update utility allowances as part of the annual project budget process.
—XII. A. 8. to permit FmHA to require reduction of clearly excessive proposed or unapproved actual budget expenses.
—XII. D. to describe special budget development procedures.

31. Paragraph XII is amended:

—XII. A. to describe a borrower's budget development responsibility.
—XII. B. to state conditions under which the borrower may draw an authorized return on investment.
—XII. C. 4. concerning advancement of funds to a project.

32. Paragraph XIII is amended:

—XIII. A. and B. concerning a borrower's responsibility to account for all project income and expenditures.
—XIII. B. 1. and 2. concerning provisions and restrictions of project funds as FmHA loan security.
—XIII. B. 2. a. (1). (ii). to provide descriptive meaning of the term "financial integrity."
—XIII. B. 2. a. (1). (iv). clarifying when withdrawal of initial operating capital may actually occur.
—XIII. B. 2. b. stating real estate tax and insurance funds may be held in a designated escrow account or held in the project's General operating Account.
—XIII. B. 2. c. clarifying when monthly reserve deposits commence and to allow an increase in the reserve account level.
—XIII. B. 2. c. (3). concerning tracking the withdrawal of Reserve Account funds.
—XIII. B. 2. c. (4). to introduce the permission to place excess reserve funds in a "trust fund" to provide future tenant subsidy.
—XIII. B. 2. c. (5). providing post approval conditions of the emergency use of reserve funds.

—XIII. C. 1. to require quarterly instead of monthly reports and to identify retention periods of various forms.
—XIII. C. 2. revising preparation and submission requirements for annual reports.
—XIII. D. to reinforce the standards of project financial and management analysis.
—XIII. D. h. to provide a formula for ratio analysis.

33. Paragraph XIII. B. 2. c. (6). is added to reference a new sample record sheet for reserve fund deposits and withdrawals.

34. Paragraph XIV. A. 4. is added to describe tenant occupancy and subsidy benefits during the termination process.

35. Paragraph XIV B., C., and D. are revised to better describe the tenant termination process.

36. Paragraph XV. B. is renamed and is amended to provide that blanket insurance policies may be accepted by FmHA.

Exhibit B–1, Management Plan

37. The following additions are made to Exhibit B–1:

—Policy statement at first paragraph.
—Item 1 to refer to a management plan instead of a management agreement for owner-management.
—Item 4. d. and e. concerning tenant certification deadlines and overage payment responsibility.
—Item 5. a. concerning occupancy standards.
—Item 8. c. m., and n. concerning replacement program and 8 o concerning seasonal labor housing.
—Item 9 concerning supplemental services.
—Item 10. b., c., and d. concerning accounting methods, quarterly reports and annual audits.
—Item 12. d. concerning procedure to identify tenants who need to transition to other suitable housing.
—Item 20 to describe project on-site management.

38. Exhibit B–1 is amended:

—Item 11 concerning energy conservation practices.
—Item 15 concerning termination of leases and tenancy.
—Item 16 concerning FmHA security servicing requirements.
—Item 19 concerning management compensation.

Exhibit B–3, Management Agreement

39. Exhibit B–3 is amended:

—I. H. describing fidelity coverage requirements.
—IV. G. to emphasize that the borrower selects the accounting system, not the FmHA.
—IV. I. by adding references to maintenance of heating systems and energy conservation practices.
—V. A. to remove outdated information about General Operating Accounts and to provide Cash carryover guidelines.
—V. B. to state that interest earned on the Tax and Insurance Escrow Account is project income.
—V. C. concerning change of reserve account requirements and emphasis.
—V. C. 2. concerning annual budget and reserve guidance and V C 5 concerning reserve requirements at the time payment of return on investment is allowed.
—VI. A. concerning management agent compensation.

Exhibit B–4, Questionnaire

40. Item 7 is amended to rename the title and to include energy conservation in a maintenance program.

Exhibit B–5, Questionnaire

41. Item 8 is amended by renaming the title and adding emphasis to maintenance as part of the management plan of a project.

Exhibit B–6

42. References to monthly reports are changed to quarterly reports and distribution of copies is changed.

Exhibit B–7

43. Exhibit B–7 is revised concerning submission requirements for the annual report and distribution of copies.

Exhibit B–8

44. Exhibit B–8 is revised to state the 3 year interval requirement for compliance review reports.

Exhibit C, Rental Changes

45. Exhibit C is amended:

—The exhibit title is changed to better describe this subject.
—Paragraph II. C. is added to define "Rental or Occupancy Charge Rate."
—Paragraph III. B. by adding a title of "Rental or Occupance Charge Change Policies," and by sequencing the discussion; the paragraph is further amended by adding B. 6. and B. 7.
—The title to paragraph IV is revised to clarify that the discussion applies to project rental changes.
—Paragraph IV. A. 5. is added to include an updated utility allowance schedule together with supporting actual costs of utility usage as part of a rental change request.
—Paragraph IV. B. is revised and paragraph IV. C. and D. are added to describe the District Director's review responsibilities upon receipt of a rental change request.
—Paragraph VIII. A. is clarified by stating conditions under which FmHA may adjust or cancel the FmHA interest reduction in Section 8/515 projects.
—Paragraph X. is revised to associate Special Servicing Market Rate (SMR) rental schedules with a servicing plan.
—Paragraph X. A. 2. b. is clarified by describing "Cash" as Cash on hand and referring to a current accumulation of reserve rather than a required "level" of reserve.
—Paragraph X. B. 2. is revised to provide authorization for the FmHA Assistant Administrator for Rural Housing to permit obligation of initial loan funds while an SMR is in effect on a project in the market area.
—Paragraph X. C. 3. is added as procedural reference for the practice of reporting additional payments to the reserve account when HUD contract rents exceed SMR levels.
—Paragraph X. D. 1. is clarified in that provisions of this subparagraph must be met before any following provisions in the subparagraph are considered.
—Paragraph X.D.3. is revised to state that an SMR is terminated when the note rate of interest is regained.
—Paragraph X.E. is added to discuss disapproval of an SMR.

Exhibits C–1 and C–2, Notices

46. Exhibits C–1 and C–2 are revised to incorporate notice of utility allowance change in addition to the notice of rent change.

Exhibit D, Energy Audits

47. Exhibit D is revised:

—Paragraph III.A. to require an initial energy audit during the third year of project operation following construction.
—Paragraph III.B. to permit energy audits to be performed more frequently than every five years, and is clarified to state that such audits are made to check energy conservation measures and practices.
—Paragraph III.C. by stating the energy audit will be submitted as part of a rental change request.
—Paragraph III.D. concerning cost of an energy audit.
—Paragraph IV clarifies energy audit standards.

Exhibit E, Rental Assistance Program

48. Paragraph II. is revised:

—Superfluous language is removed in II.A.
—II.A.4. is added to state the policy that borrowers must have unexpired and signed Forms FmHA 1944–8, "Tenant

Certification" on file for tenant households.
—B.2. to describe FmHA administrative requirements.
—II.G. provides a definition for "servicing units" of rental assistance.

49. Paragraph V. is revised:
—Obsolete language is deleted in V.C.3.
—V.C.4. is revised to describe a borrower's appeal rights.
—V.C.5.a. (2), and (3) are revised for clarification and to describe the third set of two digits in a rental assistance agreement number, respectively.
—V.C.5.c. is revised by removing the requirement for the FmHA Finance Office to notify the District Office of rental assistance tracking on a paper form.

50. Paragraph VI.B.3.a. is revised concerning use of rental assistance as an incentive to avert prepayment.

51. Paragraph VII. is revised by deleting outdated requirements.

52. Paragraph X.A. 1. and 2. are revised to delete language and add new language dealing with the automated payment of rental assistance.

53. Paragraph XI. is revised:
—Paragraph XI.A.1. and XI.B.1.b. to reference the current priority order for tenant selection.
—Paragraph XI.D. describes the order of assigning rental assistance in farm labor housing projects.
—XI.E.3. is clarified as to who receives rental assistance and who benefits from the subsidy and XI.E.4. clarifies administrative requirements.

54. Paragraph XIV.A. is revised to reflect current administrative requirements resulting from automation.

55. Paragraph XV. is revised;
—XV.A. 1. and 2. to meet FmHA administrative requirements.
—XV.A.2.d. provides administrative guidance for preparing rental assistance agreements.
—XV.A.2.e. states the State Director's authority to transfer undisbursed balances of rental assistance.
—Paragraph XV.A.2.g. to state that a receiver of transferred rental assistance units may use them on the first day of the month that follows approval of the transfer.
—XV.B.2. is expanded to discuss rental assistance transfer after a foreclosure sale.
—XV.B.5. concerning a borrower's request for rental assistance transfer.

Exhibit H, Interest Credits on Insured RRH and RCH Loans

56. Exhibit H is revised:
—The definitions at paragraphs II D and E are clarified to emphasize that rental rates include coverage of project expenses that are budgeted.
—Paragraph III.A. is expanded to require Plan I projects receiving a subsequent loan to convert to Plan II.
—Paragraph IV.A.2.d. concerning tenant certification requirements in a Plan I project.
—Paragraph IV.B.2. to permit one budget that reflects two rent levels rather than require two separate budgets.
—Paragraph V.C. to describe that the combination of all loan payments for a project is the project loan payment.
—Paragraph VI.B.3. is added to describe rental rates for ineligible LH tenants.
—Paragraph VI.C. to state policy for distinguishing between a unit not ready for occupancy and one that is vacant.
—Paragraph VI.D. to identify the proper instrument of tenant certification depending upon the subsidy program involved.
—Paragraph VII.C. is clarified as to the effective date of the interest credit agreement.
—Paragraph VII.D. to identify when a new interest credit agreement can be entered into by a borrower after previous termination of interest credit.
—Paragraph IX. administrative requirements are revised due to changes by automation.
—Paragraph X. servicing requirement for interest credits are referenced to § 1965.85 of FmHA Instruction 1965–B.
—The illustration in Exhibit H–1 are updated to reflect current monetary examples.

Exhibit I

57. Exhibit I is revised throughout to include the HUD Housing Voucher program in parallel discussion with the discussion of the HUD Section 8 Housing Assistance Payments Program. The HUD Housing Voucher Program is explained at paragraph II C.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1951

Account servicing, Low and moderate income housing loans—Servicing.

7 CFR Part 1965

Administrative practice and procedures.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—General

1. The authority citation for part 1930 is revised to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

2. Subpart C of part 1930 is revised to read as follows:

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients.

Sec.

Exhibits

Title	Exhibit
Steps for FmHA Personnel in Conducting Annual Analysis of Multiple Housing Operations.	A
Review of Audit Reports	A-1
Multiple Housing Management Handbook.	B
Management Plan Requirements for FmHA Financed Multiple Family Housing Projects.	B-1
Requirements for Management Agreements.	B-2
Management Agreement for FmHA Multiple Family Housing Projects.	B-3
Questionnaire for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project.	B-4
Questionnaire for Owner Who Proposes Owner-Management of a Multiple Family Rental or Labor Housing Project.	B-5
Monthly and Quarterly Reports (Chart)	B-6
Annual Reports (Chart)	B-7
Miscellaneous Reports or Submittals (Chart).	B-8
[Reserved]	B-9
Notice of Authorized Withdrawal and Use of Reserve Funds.	B-10
Equal Housing Opportunity Logotype	B-11
Farmers Home Administration Logotype	B-12
Sample Waiting List	B-13
Reserve Account Tally	B-14
Rental and Occupancy Charge Changes	C
Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change.	C-1
Notice of Approved Rent (Occupancy Charge) and Utility Allowance Change.	C-2
Energy Audit	D
Calculation of Financial Impact (Energy Audit).	D-1
Rental Assistance Program	E
Supervisory, Security Inspection and Management Visit Preparation Worksheet—Multiple Family Housing Projects.	F
Supervisory Visit Checklist for Multiple Family Housing Projects.	G
Interest Credits on Insured RRH and RCH loans.	H
Example of Interest Credit Determination for RRH or RCH Projects (Plan II).	H-1
RRH Loans and the HUD Section 8 Housing Assistance Payment and Housing Voucher Programs (Existing Units).	I
Management of Congregate Housing and Group Homes.	J
Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence.	J-1
Types of Living Environment Needed in Relation to Nature and Degree of Disability.	J-2

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

§ 1930.101 General.

This subpart prescribes the policies, authorizations, and procedures for management and supervision of all of the following Farmers Home Administration (FmHA) Multi-Family Housing (MFH) loan and grant recipients:

(a) Farm Labor Housing (LH).

(b) Rural Rental Housing (RRH) including congregate housing.

(c) Rural Cooperative Housing (RCH).

(d) Rural Housing Site Loans (RHS).

(e) Special provisions and exceptions.

(1) Unless otherwise specified in this subpart and except for Exhibit C to this subpart, individual type RRH and LH borrowers who were not required by program regulation to execute a loan agreement are exempted from the requirements of this subpart as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA. However, these borrowers must provide evidence of tenant income eligibility, except in LH situations not paying rent nor receiving rental assistance, by properly completing Form FmHA 1944-8, "Tenant Certification," for each tenant as required by the Forms Manual Insert (FMI).

(2) The State Director may require any borrower determined to be in default of any program requirement, security instrument, payment, or other agreement with FmHA, or when otherwise failing to meet the program objectives, to comply with any appropriate section of this subpart to assure that the loan objectives are met.

(3) For RHS borrowers, the following sections of this subpart do not apply: §§ 1930.108, 1930.124, and 1930.141.

§ 1930.102 Definitions.

(a) *Adviser to the Board.* An individual or organization who will work with and provide guidance to a cooperative board of directors.

(b) *Borrowers.* "Borrowers" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations and who have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

(c) *Consumer Cooperative.* A corporation which (1) is organized under the cooperative laws of a State or Federally recognized Indian tribe; (2) will own and operate the housing on a cooperative basis solely for the benefit of the members; (3) will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with Subpart E to Part 1944 of this chapter will not be considered gains or profits; and (4) will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA permit, to others in special circumstances.

(d) *District Director.* For the purpose of this subpart, the term also includes the Assistant District Director, and other qualified District Staff who may be delegated responsibilities according to § 1930.143 of this subpart and the provisions of FmHA Instructions 2006-F which is available in any FmHA office. In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff. This definition also includes the Island Directors in Hawaii, Directors of Western Pacific Territories, and other qualified staff members in Hawaii and Western Pacific Territories, respectively.

(e) *FmHA.* "FmHA" means the United States of America acting through the Farmers Home Administration or FmHA's predecessor agencies.

(f) *Governing Body.* "Governing Body" means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

(g) *Management.* "Management" is the overall direction given by the borrower or the borrower's agent to meet the needs of the tenants or members, maintain the project, and provide sound and economical project operation.

(h) *Member.* A person who has executed documents pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

(i) *Occupancy Agreement.* A contract setting forth the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing.

(j) *OGC.* "OGC" means the Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(k) *OIG.* "OIG" means the Office of Inspector General of the United States Department of Agriculture.

(l) *Patronage Capital Refund.* Amounts received by the cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

(m) *Project.* A project is the total number of rental housing units that are operated under one management plan with one loan agreement/resolution. (The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational

project under § 1965.68 of subpart B of part 1965 of this chapter.)

(n) *State Director.* For the purpose of this subpart, State Director also includes the Rural Housing Chief, Multiple Family Housing Coordinator, Rural Housing Specialist, and other qualified State staff when delegated responsibilities under this subpart according to § 1930.143 and the provisions of FmHA Instructions 2006-F which is available in any FmHA office.

(o) *Supervision.* "Supervision" includes the broad scope of FmHA guidance available to assist borrowers to carry out the objectives of the loan and comply with FmHA regulations.

§ 1930.103 Nondiscrimination assurance.

All management and supervision actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or handicap (borrowers, tenants and cooperative members must possess the capacity to enter into a legal contract). The provisions of subpart E of part 1901 of this chapter enforcing the Civil Rights Act of 1964, as amended, along with other similar worded statutes will be complied with.

§ 1930.104 [Reserved]

§ 1930.105 Objective of management and supervision.

(a) The primary objective of management and supervision is to provide effective supervision to each borrower to accomplish the objectives of the loan or grant.

(b) To provide effective supervision, FmHA will assure that the borrower's management plan accomplishes the following:

(1) Provide proper and efficient management policies as prescribed in Exhibit B of this subpart.

(2) Comply with loan and grant agreements.

(3) Repay loans on schedule.

(4) Maintain security property.

(5) Protect the interests of FmHA.

(6) Operate facilities according to State and local laws and regulations.

(7) Maintain accounts and records.

(8) Submit reports and audits.

(9) Process rent and occupancy charge changes according to Exhibit C of this subpart.

(10) Operate the facilities according to Equal Opportunity requirements of Title VI of the Civil Rights Act of 1964, the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(11) Maintain facilities and premises that are free of illegal controlled substances.

(12) Pay any occupancy surcharges as applicable.

(c) On-farm LH loans are exempt from this subpart as long as the housing is a rent free benefit to a domestic farmworker and the annual report is submitted as required by § 1930.124(b) of this subpart.

§§ 1930.106-1930.107 [Reserved]

§ 1930.108 Extent of borrower management.

According to Exhibit B of this subpart, the borrower and/or the borrower's agent will develop a management plan for each project that describes the scope of property management needed to maintain program objectives. When the management is from other than the borrower, a management agreement will be used to define the responsibilities of the management agent. Initial, modified and/or replacement management agreements will be approved by authorized FmHA officials. A sample management agreement is provided in Exhibit B-3 of this subpart.

§ 1930.109 Extent of FmHA supervision.

All borrowers will be given guidance and advice by FmHA to help assure successful completion and operation of facilities, compliance with their agreements and obligations, and protection of the FmHA's financial interest. Supervision does not relieve borrowers of their own responsibilities and obligations. Supervision starts with the first contact by the applicant and continues as long as any loan balance remains outstanding. In the case of a grant, supervision continues until the requirements of the grant agreement have been fulfilled. Supervision of borrowers is a primary responsibility of the District Director; however, additional supervision and guidance will be given by the State Director and/or other appropriate members of the State Office staff. Security servicing actions will be handled according to subpart B of part 1965 of this chapter.

§ 1930.110 Methods of supervision.

Supervisory methods used by FmHA employees include organizational and development planning; property management planning; affirmative marketing; construction conferences; long-term, annual, and other periodic planning and evaluation; accounts, budgets, and records inspections and guidance; project inspections; attendance at membership and governing body meetings; periodic group meetings with borrowers; analysis of accounting, budgets, and audit reports; guidance by memorandums; and similar activities. Supervision of cooperative borrowers will include coordination with the adviser to the board.

(a) *Applicants.* Prior to loan or grant closing, supervision will largely be conducted during conferences and meetings with prospective borrowers and their various representatives such as applicant's attorney, architect, property manager, etc. Examples of supervision include:

(1) Organizational meetings to discuss needs, services available, owner obligations, and to establish organizational committees.

(2) Preapplication and application conferences.

(3) Preconstruction conferences to reach an understanding regarding responsibilities and the manner in which development will be performed. The applicant at this point should be made fully ware of the responsibilities detailed in § 1930.103 of this subpart.

(4) Preloan and/or grant closing conferences to review requirements of the loan resolution or agreement, closing requirements, and management plan and to establish responsibilities for the operation of the project. The applicant at this point should be made fully aware of the responsibilities entailed in § 1930.103 of this subpart.

(5) Prerent-up or preoccupancy conferences to review the management plan, marketing plan, and the general readiness of project facilities, recordkeeping systems, renting or occupancy procedures, and personnel assignments to begin project operation. This conference will be conducted according to § 1944.235 (h) of this chapter.

(b) *Borrowers who have yet to demonstrate their ability and borrowers with problems.* When the borrower is establishing its operations, or when borrowers are delinquent, or have other difficulties, supervisory guidance will include:

(1) Implementation and/or review for compliance with the management plan.

(2) Establishment and maintenance of a financial recordkeeping and reporting system.

(3) Compliance with the requirements of the loan agreement of loan resolution.

(4) Review of annual audit and budget requirements.

(5) Any other supervision that may be necessary to assure effective and successful operation of the project.

(6) A requirement that the borrower contract with a management firm with proven background and/or experience in property management. In the case of

cooperative housing, this stipulation will apply only when it has been determined that the cooperative is unable to manage itself.

(c) *Borrowers who have demonstrated ability.* Supervision will consist of at least an annual review of budgets and reports according to § 1930.124, and a triennial supervisory visit according to § 1930.119 of this subpart when the borrower is:

(1) Successful in completing a first full fiscal year of operation.

(2) Current with loan payments.

(3) In compliance with other loan or grant requirements.

(4) Maintaining the security in a satisfactory manner.

(5) Otherwise progressing satisfactorily.

Supervision of grant-only recipients will consist of at least the reviews and inspections outlined in § 1930.119 of this subpart.

§§ 1930.111-1930.112 [Reserved]

§ 1930.113 Borrower responsibilities.

Borrower responsibilities are described in paragraph III of Exhibit B of this subpart.

§§ 1930.114-1930.116 [Reserved]

§ 1930.117 Agency responsibilities.

Effective supervision requires FmHA employees to be familiar with the various types of borrowers; to communicate effectively with borrowers and their management agent, when applicable; and to provide guidance in the operation and management of MFH projects.

(a) *District Director.* District Directors are responsible for effective borrower supervision. District Directors will:

(1) Organize their work and the work of their staffs in order that time is used effectively in providing borrower supervision and place emphasis on supervisory visits and review of borrower management reports.

(2) Emphasize to the borrower and/or the borrower's management agent that they, not FmHA, are responsible for managing the project, collecting rents or occupancy charges, repaying the loan on schedule, project maintenance; and for compliance with any loan or grant agreement or resolution, State laws, and other FmHA requirements.

(3) Monitor all provisions or conditions of the FmHA approval documents to ensure that they are fully complied with throughout the life of the project.

(4) Monitor the borrowers' compliance with FmHA regulations concerning real property tax, insurance, bonding, security, budgeting, and reporting requirements.

(5) Assure that borrower financing statements are continued and not allowed to lapse.

(6) See that each borrower designates a representative to serve as its contact source.

(7) Become familiar with the borrower's bylaws or other rules and regulations when necessary to assure compliance with FmHA's program and civil rights requirements.

(8) Provide borrowers with governing bodies with suggestions for information distribution that may be helpful in keeping the membership in touch with activities to increase and maintain membership interest.

(9) Provide informed advice and guidance to borrowers as needed.

(10) Identify problem borrower accounts and initiate servicing plans including workout agreements with the borrower.

(11) Gather, maintain and analyze a database of MFH operation and maintenance cost for determination of cost reasonableness.

(12) Avoid doing any of the following:

(i) Try to run the borrower's business.

(ii) Take charge of the borrower's meetings.

(iii) Attempt to supervise the borrower only through its attorney, architect, or management agent.

(iv) Assume that in the absence of adverse complaints, the borrower is proceeding successfully.

(b) *State Director.* State Directors will:

(1) Coordinate and direct supervisory activities related to borrowers and perform other functions as prescribed by this subpart.

(2) Provide guidance and leadership to assure that the State staff and District staff thoroughly understand and carry out their responsibilities.

(3) Develop and conduct training programs necessary to assure that FmHA personnel are kept up-to-date regarding the most effective supervisory methods, that the proper time is allotted to supervision, and that borrowers receive adequate supervision and financial counseling.

(4) Maintain necessary liaison with the OGC.

(5) Maintain necessary liaison with State and local authorities, agencies, and other organizations. For example, in the case of projects benefiting the elderly, it is essential that liaison be maintained with the aging network such as State and Area Agencies on Aging to assure that available support services are offered to or accessible by the tenants.

(6) Maintain and update State Office records for effective program supervision and evaluation.

(7) Assist the District Director in developing a realistic plan to resolve project operational problems.

(c) *State staff.* State staff members including Rural Housing (RH) program chiefs and specialists, management specialists, architects, and others responsible for supervision of borrowers covered by this subpart will:

(1) Continuously monitor supervisory and account servicing activities and borrower status to assure that each borrower is receiving timely and effective supervision.

(2) Train District Directors and other District staff to effectively perform the required supervisory and account servicing activities, and to provide informed guidance in sound operation and management policies. The assistance of the aging network such as State and Area Agencies on Aging should be sought in connection with training which pertains to the management of services to the elderly.

(3) Post review closing of loans and grants to determine that they have been properly closed.

(4) Visit a sufficient number of projects to assure that proper supervision and account servicing is being provided.

(5) Assemble and analyze a statewide database of MFH operation and maintenance costs gathered by District Offices for determination of cost reasonableness.

§ 1930.118 [Reserved]

§ 1930.119 Supervisory visits and inspections

(a) *Purpose.* District Directors and other FmHA officials or other FmHA authorized persons will visit the project site, including the management office, as necessary to accomplish the objectives of the loan or grant. Following are the major purposes for which visits may be made:

(1) To assist with satisfactory development of the project.

(2) To evaluate the management program of the project pursuant to Exhibit B of this subpart, such as:

(i) Adherence to the management plan.

(ii) Compliance with the management agreement when applicable.

(iii) Compliance with the Affirmative Fair Housing Marketing Plan and/or the Equal Opportunity requirements of Title VI of the Civil Rights Acts of 1964, the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of

1986, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(3) To review borrower records and verify required compliance and information, such as:

(i) Tenant or member eligibility.

(ii) Tenant or member income.

(iii) Tenant or member selection criteria.

(iv) Waiting lists.

(v) Rental or occupancy rates.

(vi) Other necessary items.

(4) To inspect and ascertain proper maintenance and assure protection of the security for the FmHA loan.

(5) To determine if the approved project budget is being followed.

(6) To determine that borrower and/or borrower's management agent is fully complying with all provisions and conditions of the approval document regarding site development and use restrictions.

(b) *Frequency and Standards.* Visits will be made as follows:

(1) Supervisory visits will be made as needed to assure compliance with FmHA policies and objectives. Otherwise, a District staff person or other FmHA authorized person will perform a post rent-up or occupancy visit before the end of the first 90 days of operation; and a thorough supervisory visit at the end of the first year of operation and at least every three years thereafter at each project. More frequent visits to all loan types should be scheduled as needed. Planned visits will be included in the monthly work calendar. The visit shall be conducted with the borrower and/or the borrower's designated representative (see Guide Letter 1930-2 for borrower notification). Exhibits F and G of this subpart should be used to assist in the preparation, completion, and follow-up of visits. For small rental projects consisting of only a few units (usually 1 to 3), the degree of completion of Exhibits F and G may be minimized. Supervisory visits to such projects are required only once every three years and should concentrate on tenant eligibility, income and adjustments to income verifications, maintenance, insurance coverage and status of loan payments.

(2) The District Director or other FmHA authorized person will conduct an inspection of each project at least once every three years with the borrower, site manager or designated representative present. This inspection may be made simultaneously with a supervisory visit scheduled in accordance with this section. The results of the inspection will be documented in the running record and formally recorded on Form FmHA 1930-8, "Year End Report and Analysis for Fiscal Year Ending ______." HUD Form 9822, "Report of Physical Condition and Estimate of Repair Costs," or a similar HUD Form for the same purpose may be used for this inspection. Based on the District person's knowledge, without further research, the estimated repair need and cost columns of the form will be completed during the inspection visit.

(c) *Preparation.* The person planning to make the visit and inspection will review the most recent quarterly or annual reports, the running records, correspondence, and other District Office records to be fully aware of the supervisory needs of the project. This awareness should be developed into an informal visit plan and include, but not be limited to such things as: payment status, subsidy status, due dates of taxes and insurance, adequacy of fidelity coverage, and any known maintenance problems.

(d) *Conducting visit or inspection.* The person making the visit or inspection should spend sufficient time at the project to accomplish the visit plan and any additional needs that are observed or brought out by the tenants, members, or management staff.

(e) *Recording, reporting and follow up.* The results of each visit will be recorded in the running record. A letter summarizing any supervisory visit and outlining follow-up action will be directed to the borrower. Follow-up will continue through resolution of any problems. Any major problems with the project will be reported in writing to the State Director with recommendations for corrective action. Exhibit A to subpart A of part 1955 of this chapter or Form FmHA 1955-2, "Report on Real Estate Problem Case," may be used as appropriate.

(f) *Compliance reviews.* An authorized State or District staff member or other FmHA authorized person will complete the Civil Rights and Fair Housing review requirements according to subpart E of part 1901 of this chapter. If initial rent-up or occupancy has not occurred by the time of initial review, a subsequent review will be due one year following initial occupancy and then every three years thereafter or in accordance with subpart E of Part 1901 of this chapter.

§§ 1930.120–1930.121 [Reserved]

§ 1930.122 Borrower accounting methods, management reporting and audits.

(a) *Accounting methods and records.*

(1) *Method of accounting and financial statements.* Financial statements must be prepared on the accrual basis of accounting unless State statutes or regulatory agencies provide otherwise, or an exception is made by FmHA. THIS REQUIREMENT IS FOR ACCRUAL BASIS FINANCIAL STATEMENTS AND NOT FOR ACCRUAL BASIS ACCOUNTING SYSTEMS. Organizations may keep their books on an accounting system other than accrual and then make adjustments so that the financial statements are presented on the accrual basis.

(2) *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall provide to, and obtain approval from, the FmHA loan approval official for its accounting and financial reporting system, including the agreement with its auditor, if an auditor is required.

(3) *Records.* Form FmHA 1930-5, "Bookkeeping System—Small Borrower," may be used by small organizations as a method of recording and maintaining accounting transactions.

(4) *Record retention.* Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA, the Comptroller General, or to their representatives.

(b) *Management reports.* These reports will furnish the management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial conditions. Timely reports furnish necessary information to make sound management decisions. All reports will relate only to the FmHA financed project. Separate reports will be prepared and submitted for each project owned by the same borrower. Forms necessary in making the required reports may be requested from FmHA.

(1) *Quarterly report.* (i) Form FmHA 1930-7, "Multiple Family Housing Project Budget," will be completed for the first quarter year after:

(A) Completion of a project or occupancy of any units when FmHA provides the construction financing,

(B) FmHA loan closing or occupancy of any of the units where interim financing is used,

(C) Reamortization,

(D) Transfer,

(E) Failure to make scheduled payment, or

(F) Failure to make or maintain required transfers to reserve.

(ii) The District Director will review the report and take appropriate action and distribute the report according to the FMI.

(iii) Quarterly reports are required through the project's first year of successful operation and each quarter thereafter until discontinuance is authorized in writing by the District Director when it is determined that:

(A) The project is being operated and maintained in a satisfactory manner for the most recent six month period;

(B) An adequate accounting system is being maintained and complete and satisfactory annual reports are being submitted;

(C) Payments to FmHA are on schedule;

(D) The reserve account is ahead or on schedule allowing for authorized expenditures;

(E) The annual analysis has been completed by the District Director and the audit (or verification) has been found acceptable, and

(F) The District Director has inspected the project, reviewed project operations, and found them acceptable. A copy of the discontinuance letter will be sent to the State Director.

(G) The reporting and audit requirement of paragraphs (b)(1)(iii) (B) and (E) of this section do not apply when the most recent six continuous months of successful operation occurs before the first audit and/or annual report is required.

(iv) The District Director may require monthly reports on Form FmHA 1930–7 when determined essential as part of a servicing plan made in accordance with subpart B of part 1965 of this chapter.

(2) *Annual reports.* Annual reports will be submitted between 30 days prior and 30 days following the close of the project fiscal year and/or any extension authorized in writing by the District Director. The District Director will follow-up on any reports, including audit reports, at least every 30 days after the due date until the reports are received. The report will consist of:

(i) An audit report or verification of accounts as required by paragraph (b)(3) of this section, except the audit report may be delayed up to an additional 60 days provided the other annual report requirements are submitted.

(ii) Form FmHA 1930–7 for the year being planned and the actual income and expenses for the previous year. The form will be completed according to the FMI.

(iii) Exhibit A–6 of subpart E of part 1944 of this chapter when required for the project reflecting any adjustment.

(iv) Form FmHA 1930–8 completed according to the FMI.

(v) Copies of the minutes of any annual meeting required by the borrower's organizational documents or other related material that the District Director may request.

(vi) An energy audit as required by Exhibit D of this subpart.

(3) *Audit reports.* All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), as set forth in "Government Auditing Standards" (1988 Revision), established by the Comptroller General of the United States, and any subsequent revisions (commonly referred to as the "Yellow Book" or "GAO Standards"). In addition, the audits are also to be performed in accordance with Departmental Regulations, subparts I and C of parts 3015 and 3016, respectively of chapter XXX of title 7, when applicable, and in accordance with requirements as specified in separate sections of this subpart.

(i) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart, 7 CFR part 3015, subpart I, and OMB Circular A–128, with copies of the audits being forwarded by the borrower to the FmHA District Director and the appropriate Federal cognizant agency, if applicable. For guidance in meeting these requirements, the auditor should refer to the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide for "Audits of State and Local Government Units."

(A) *Cognizant agency.* (*1*) "Cognizant agency" means the Federal agency assigned by OMB Circular A–128. Within the Department of Agriculture (USDA), the OIG shall fulfill cognizant agency responsibilities.

(*2*) *Cognizant agency assignments.* Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted.

(B) *Audit requirements.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(*1*) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128.

(*2*) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal assistance shall have an audit made in accordance with OMB Circular A–128 or in accordance with FmHA audit requirements. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with FmHA requirements, the audit shall be in accordance with paragraph (b)(3)(iii) of this section.

(*3*) State and local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from compliance with OMB Circular A–128 and FmHA requirements. These State and local governments and Indian tribes shall be governed by audit requirements prescribed by State and local law or regulation.

(*4*) Public hospitals and public colleges and universities may be excluded from OMB Circular A–128 audit requirements. If such entities are excluded audits shall be made in accordance with paragraph (b)(3)(ii) of this section.

(ii) *Nonprofit organizations.* These organizations are to be audited in accordance with OMB Circular A–110 as referenced in Departmental Regulations, subpart C of part 3016 of chapter XXX of title 7 and paragraph (b)(3)(iii) of this section. These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audit requirements of paragraph (b)(3)(i) of this section.

(iii) *For-profit organizations and other entities referred to this paragraph by paragraphs (b)(3)(i) and/or (b)(3)(ii) of this section.* In performing audits under this paragraph, the USDA OIG has published an audit guide entitled "U.S. Department of Agriculture, Farmers Home Administration-Audit Program" (available in any FmHA office).

(A) For each project with 25 or more units, an audit report will be prepared by a Certified Public Accountant (CPA) or Licensed Public Accountant (LPA), licensed on or before December 31, 1970. The CPA or LPA may not be an individual or organization that is associated with the borrower in any manner that creates a possible conflict of interest. For example, the CPA or LPA cannot be an employee of the borrower or an employee of any member, stockholder, partner, principal, or have any other interest in the borrower organization.

(B) For each project with 24 or less units, an audit will not be required except as outlined in paragraph (b)(3)(iii) of this section. The borrower will, however, provide for each project a compilation or a verification of accounts on Form FmHA 1930–8 by a competent

individual qualified by education and/or experience who is independent of the borrower. In the case of a nonprofit organization, the verification may be made by a committee of the membership not including any officer, director, or employee of the borrower.

(C) The State Director or District Director may, for good cause, require that the accounts for any project be audited by a CPA or LPA, such as when records are incomplete or inaccurate or it appears that the borrower has not adequately accounted for project income. The State Director or District Director may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.

(D) The State Director or District Director may authorize the initial audit (or verification of account) to cover a period up to 18 months for new projects whose first operating year was for a period of 6 months or less.

(E) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one successive year in a specific case providing: (*1*) the borrower submits a written request; (*2*) the FmHA approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of the audit will increase the monthly per unit rental rate by more than $4.00; (*3*) the required reports, including a CPA or LPA audit, were properly submitted for the prior year's operations; and (*4*) the borrower provides the verification on Form FmHA 1930–8 by a competent individual who is independent of the borrower.

§ 1930.123 Annual analysis.

Each project will be scheduled for an annual analysis by the District Director not later than 60 days following the end of the project's fiscal year. The purpose of the analysis will be to determine the degree and adequacy of the borrower's compliance with the applicable FmHA loan or grant agreements; and to provide consultation or supervision in meeting program objectives. The analysis will be completed within the 60 day period except for extenuating circumstances such as the borrower's failure to provide the required information on time. In all cases, the analysis will be conducted as soon as possible after the required information is submitted by the borrower.

(a) *Preparation for the analysis.* No later than 30 days before the end of the borrower's fiscal year, the District Director will:

(1) Notify the borrower of the required reports and the due dates, and provide the borrower with necessary guides and forms for use in preparing reports.

(2) When applicable, such as a loan to a new nonprofit organization, assure that the borrower properly plans for its annual meeting, and holds it on the correct date. The District Director should plan to attend the annual meeting unless the borrower has progressed as described in § 1930.110(c) of this subpart.

(3) Arrange an inspection of the project with the borrower or the borrower's representative according to § 1930.119(b)(2) of this subpart.

(b) *Conducting the analysis.* The analysis will be conducted by the District Director promptly after the required reports are submitted by the borrower. It is encouraged, but not required, that the borrower be present during the actual analysis. The District Director may complete the analysis, provided the information required by Part IV of Form FmHA 1930–8 can be completed from the District Director's knowledge of the operation. The District Director should review each step listed in Exhibit A of this subpart when conducting the annual analysis and carefully document the results in a memorandum or in the borrower's case file. Exhibit A–1 should be followed when analyzing the required audit reports to determine if the reports are in compliance with Agency regulations. Comments and recommendations should also be recorded in the appropriate section of the Form FmHA 1930–8.

§ 1930.124 Distribution and review of reports and annual analysis information.

(a) *Distribution.* The items required by this subpart will be distributed according to the appropriate FMI's.

(b) *State Director's review of annual analysis.* Upon receipt of the items listed in paragraph (b)(2) of this section the State Director will:

(1) Review the information submitted, obtain any required modifications, and provide comments and recommendations by memorandum to the District Director. When the authority to approve budgets as part of the annual analysis or rent change is delegated to District Directors, a copy of approved budgets and annual reports must be sent to the State Office for review. In cases where the District Director does not have delegated authority, the State Director or State staff delegate will approve Form FmHA 1930–7.

(2) Be prepared for a review of reports by the National Office upon request.

§ 1930.125 Changing project designation.

Generally rental projects designated for families, elderly or handicapped persons will be used for the original purpose throughout the life of the FmHA loan. However, if it becomes necessary to change the designation of a project due to housing market changes which inhibit the borrower's ability to maintain occupancy levels sufficient to sustain the project, the State Director may change the designation with the prior written concurrence of the National Office. No change in the plan of operation (limited profit, nonprofit or full profit) will be authorized in conjunction with the change in project designation. Project design must meet the housing requirements of the target group when changing the designation. The National Office will only consider such requests on a case-by-case basis when all of the following information has been provided:

(a) The complete borrower case files have been submitted together with the State Director's specific recommendations and analysis of the present and long-term situation.

(b) A market needs survey which substantiates the rationale for the change has been provided by the borrower. (The market survey must clearly indicate the original market has changed the present long-term marketability of the project, and include the appropriate demographic information which reflects the population trends in the area.)

(c) A summary of all servicing actions taken by FmHA to aid the borrower in maintaining the present designation.

(d) A summary of all actions taken by the borrower to effectively market the units to potential eligible tenants.

(e) A summary of the impact the change will have on any existing tenants, rent subsidy needs, and the community as a whole.

(f) A summary of any physical modifications and cost feasibility to complete the modifications.

§§ 1930.126–1930.127 [Reserved]

§ 1930.128 Labor housing grants.

In addition to the supervision provided in connection with LH loans, recipients of LH grants will receive supervision to assure that the terms of the grant agreement and other objectives of the LH grant are carried out. This supervision will be continued to assure that the grant purposes will be accomplished. Comments on the following points will be included in appropriate reports, to assure that:

(a) The rents are reasonable.

(b) The project is operated as a community service for the benefit of the tenants.

(c) Domestic farm laborers are given absolute priority in occupancy. (This

requirement also applies to borrowers who have LH loans only.)

(d) No organization borrower may require that an occupant work for a particular farm or for a particular owner or interest as a condition of occupancy of the housing.

§ 1930.129 Rural housing site loans.

RHS loans will be serviced according to program regulations and the conditions specified in the borrower's loan resolution. The following additional supervisory action by the District Director will also apply to assure that the terms of the loan resolution and loan objectives are carried out:

(a) Review of the site development account records for compliance with authorized loan expenditures.

(b) Work with the borrower on the adjustment of sales price, not to exceed market value, of the developed lots as they are being sold to assure adequate income to repay the loan, pay taxes, accrued interest and any other authorized debt or expenditures.

(c) Determine that lots are sold only to eligible buyers.

(d) Work closely with the borrower to plan for the sale of all lots prior to the due date of the note.

(e) Should the RHS borrower default in its loan obligations, the account will be serviced according to § 1965.85 of Subpart B of Part 1965 of this chapter. The District Director's report to the State Director should contain the following information:

(1) The status of the account, number of lots unsold, and reasons for the problem.

(2) Prospects of sellings lots to eligible buyers and a target date as to when this can be accomplished, if feasible.

(3) General comments and recommendations for future servicing of this account. Where necessary, liquidation may be recommended.

(f) State Directors will take the following actions in connection with problem RHS accounts:

(1) Provide additional guidance and assistance as necessary.

(2) If a satisfactory proposal for selling the lots can be developed, the account will be serviced according to program regulations and the provisions of this subpart and subpart B of part 1965 of this chapter.

(3) Where no satisfactory proposal for selling the remaining lots can be developed, the account will be handled according to § 1965.85(e) of subpart B of part 1965 of this chapter for liquidation.

§§ 1930.130–1930.133 [Reserved]

§ 1930.134 FmHA office records.

FmHA officials will maintain records in accordance with FmHA Instructions 2033–A and G (available in FmHA offices).

§§ 1930.135–1930.136 [Reserved]

§ 1930.137 State Supplements, guides, forms, and other issuances.

It is FmHA practice to follow the provisions of the Administrative Procedures Act by inviting public comment before adopting public policy, unless otherwise directed by statute. However, the State Director may, in accordance with FmHA Instructions 2006–B (available in any FmHA office), and with prior approval of the National Office and the assistance of the OGC, develop State Supplements, guides, or issuances to the extent necessary to enable borrowers to comply with the policies, procedures and exhibits of this subpart and the applicable provisions of State laws. Under no circumstances will State forms be developed as replacements for the forms referred to in this subpart.

§ 1930.138 Supervisory actions for distressed projects.

MFH projects experiencing high vacancy rates which would lead to project failure can apply for a special servicing market rate rent (SMR) change in accordance with paragraph X of Exhibit C of this subpart.

§§ 1930.139–1930.140 [Reserved]

§ 1930.141 Materials to be provided borrower/applicant.

To enable borrowers and applicants to meet the intent of this subpart, they will be supplied with one reproducible copy of the following FmHA Exhibits and materials:

(a) Exhibits B and B–1 thru 14 of this subpart, when applicable.

(b) Exhibits C, C–1 and C–2 of this subpart.

(c) Exhibits D and D–1 of this subpart.

(d) Exhibit E of this subpart.

(e) Exhibits H and H–1 of this Subpart.

(f) Exhibit I of this subpart.

(g) Exhibits J, J–1 and J–2 of this subpart, when applicable.

(h) Subpart L of Part 1944 of this chapter.

(i) Booklet entitled "Audit Program."

(j) For farm LH borrowers and/or applicants, Exhibit B of subpart D of part 1944 of this chapter in addition to the preceding items of this section.

(k) The following forms:

(1) Form FmHA 1930–7 and attached Exhibit A–6 of subpart E of part 1944, if applicable.

(2) Form FmHA 1930–8.

(3) Form FmHA 1944–7, "Interest Credit and Rental Assistance Agreement."

(4) Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance."

(5) Form FmHA 1944–8.

(6) Form FmHA 1910–5, "Request for Verification of Employment."

§ 1930.142 Complaints regarding discrimination in use and occupancy of Multiple Family Housing.

Any tenant or prospective tenant seeking occupancy or use of RRH, RCH, LH or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age, familial status, or handicap (must possess capacity to enter into legal contract) may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD) Washington, DC 20410, or any HUD office, or to the Secretary of Agriculture, Washington, DC 20250. If the complaint is made to an FmHA County, District, or State Office, it must be directed to the Director of Equal Opportunity Staff (EOS), National Office by the FmHA employee in charge of that office. When a complaint is sent to FmHA–EOS by a County or District Office, the State Director will be made aware of the complaint.

(a) Personnel in FmHA field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.

(b) Each complaint must contain the following information:

(1) The name and address of the respondent.

(2) The name and address of the aggrieved person.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(c) Participants in FmHA's housing program failing to comply with the requirements of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. All complaints will be handled in accordance with prescribed procedure.

Victims of discriminatory housing practices may seek reparations through HUD or by private lawsuit.

§ 1930.143 Delegation of responsibility and authority.

(a) The Administrator may on an individual state basis, authorize the State Director to contract out selective fact gathering, nondecision making servicing actions in this subpart.

(b) The State Director may delegate in writing any authority delegated to the State Director in this subpart unless otherwise restricted, to those State staff members who, in the opinion of the State Director, have been adequately trained and who demonstrate their knowledge in understanding and administering the MFH policies and procedures of FmHA. The State Director may further delegate such authority in like manner to District Offices by either of two options:

(1) To individual District Office staff members, including the District Director.

(2) To the position of District Director, the incumbent of which may further delegate specified authority to identified District Office staff members. A copy of such delegation will be filed with the State Director.

(c) Individual delegation of responsibility and authority may be limited or expanded in scope, or revoked, as deemed appropriate by the State Director, or the District Director when applicable, and will be prepared according to FmHA Instruction 2006–F which is available in any FmHA office.

§ 1930.144 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the accomplishment of the purposes of the MFH program or result in undue hardship by applying the requirement. The Administrator may exercise the authority at the request of the State Director or the Assistant Administrator for Housing. The request must be supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated.

§ 1930.145 Appeals.

Only the borrower, or the borrower's representative (as defined in subpart B of part 1900 of this chapter), can appeal an FmHA decision. The borrower's management agent may not request an appeal unless he/she has been designated as the borrower's representative. This means he/she must be authorized in writing by the borrower to act for the borrower in the administrative appeal, as required by subpart B of part 1900 of this chapter. The borrower's request for review of an alleged adverse decision must be made to FmHA in written form. Appeals will be handled in accordance with directions set forth in subpart B of part 1900 of this chapter.

§§ 1930.146–1930.150 [Reserved]

Exhibit A—Steps for FmHA Personnel in Conducting Annual Analysis of Multiple Housing Operations

I. *Examine the Condition of the Records to Determine that:*

A. Required accounts are being properly maintained in accordance with the loan resolution or agreement.

B. Decisions of officials are being entered in the minutes book, if applicable.

C. Financial transactions are recorded as they occur in a complete and orderly manner in the appropriate books.

D. Any membership or stock transfers have been approved by FmHA and recorded as required.

E. The books of accounts are maintained by qualified persons.

F. The books of accounts are reviewed by an auditing committee or qualified accountant as required.

II. *Study the Financial Progress:* Compare current financial condition and owner's equity with previous years to discover any trends, for example:

A. Has cash carryover increased or decreased?

B. Are the debts greater or less?

C. Is the owner's equity greater or less?

D. Are accounts receivable greater or less?

E. Are collection provisions being enforced?

F. Are reserve and other required funds or accounts properly maintained?

III. *Study the Statement of Income and Expenditures for the Past Year:* Compare it with the budget for the past year and the same statement for previous years.

A. Were rents or occupancy charges, subsidies, and other monies collected sufficient to produce the required revenues for planned expenditures?

B. Were actual expenditures significantly different from those budgeted?

C. Were the expenditures sufficient to adequately maintain the project?

D. Were expenditures reasonable and typical for similar projects?

E. Were any essential items of maintenance deferred during the past year?

F. Were payments made on authorized debts in the proper amounts and on the dates agreed to?

G. If the borrower is operating on a limited profit basis, did net cash return exceed the amount permitted in the loan agreement or loan resolution?

H. Did the borrower charge late fees to project accounts?

I. Were excessive overage charges paid by the project?

IV. *Study the Budget for the Next Year:* Compare it with the statement of income and expenditures for the past year, taking into consideration any known increase or decrease in operating expenses for the planned year and the prevailing costs of doing similar business in the market area.

A. Are proposed expenditures adequate for normal maintenance and operation of the project?

B. Are proposed fees to be paid to firms closely associated with the borrower and their management agents typical, reasonable, and earned for the services to be provided?

C. Does the budget make provision for financing maintenance or energy conservation measures/practices deferred from the previous year?

D. Does it provide for the required financial reserves?

E. Is planned revenue adequate to cover planned expenditures?

F. Will the budget and planned operating practices correct any deficiencies in the past year's operations?

V. *Study the Audit Report:* Compare it with the audit from the previous year, noting any significant changes affecting the borrower's operations. Exhibit A–1 may be used as a guide.

VI. *Review the Energy Audit:* Review the energy audit and the borrower's recommendations for implementation.

VII. *Determine Whether or not the Borrower has:*

A. Followed the management plan, including occupancy requirements, leasing requirements, Affirmative Fair Housing Marketing Plan, Energy Audit, and Tenant Grievance and Appeals Procedure.

B. Renewed fidelity coverage and insurance policies.

C. For borrowers with governing bodies.

1. Held regular board, committee and membership meetings.

2. Conducted the affairs along sound business lines.

D. Made a change in any organizational documents without FmHA consent.

E. Made a change in the plans for management and operations of the project without FmHA consent.

F. Made a change in the membership or interest in ownership without FmHA consent.

VIII. *Summary:* Summarize major observations and decisions reached as the result of the review and record on Form FmHA 1930–8, "Year End Report and Analysis For Fiscal Year Ending ______."

Exhibit A–1—Review of Audit Reports

I. *Purpose.* To present a general guide for use of Farmers Home Administration (FmHA) staffs in the review of independent accountants' audit reports in order to obtain maximum benefit from these audits. The procedures are designed to provide uniformity in the audit review, improve loan program servicing and help to promote better independent audits.

II. *General.* FmHA guidelines for independent auditors are detailed in the booklet, "U.S. Department of Agriculture,

Farmers Home Administration—Audit Program" (hereinafter called Audit Program and available from FmHA). This Audit Program, along with other instructions, is designed to protect the security of Government loans. The review of the financial and financially related information in the audits must be performed from a technical standpoint in a prompt manner so that the facts and conclusions are readily available for analysis; only then can results be used effectively for management purposes and help to insure improved audit practices.

III. *Scope.* The review should include:

A. A determination of the adequacy of the audit in relation to FmHA regulations and the Audit Program.

B. Interpretation of information included in the audit.

C. Preparing a letter to the borrower on any missing or adverse audit data.

D. Informing appropriate FmHA offices of review results and recommendations.

IV. *Review Procedures to be Followed.*

A. *General.* The individual professional judgment of the reviewer should be used at all times. Considerations and decisions requiring the exercise of judgment should be used in the following:

1. Circumstances peculiar to the borrower.
2. Degree of importance attached to each item questioned.
3. Number of exceptions.
4. Whether the exceptions relate to the auditor's work or the borrower's records and operations.
5. If specific action is to be requested of the borrower.
6. Whether or not the report, as a whole, is acceptable.

B. *Review and Procedure.*

1. *Specific.*

a. Determine if the audit was performed by a Certified Public Accountant or a Licensed Public Accountant who was licensed on or before December 31, 1970.

b. Determine if the audit was conducted in accordance with Government Auditing Standards (1988 Revision), often referred to as generally accepted government auditing standards (GAGAS).

c. Does the audit cover the most recent 12 months since the previous audit?

d. Was the audit received within 30 days after the borrower's year end, or was a delay up to an additional 60 days authorized by the District Director?

2. *Evaluation checklist for audit reports.* The "Evaluation Checklist for Audit Reports" which is part of this exhibit is designed to systematically record and reveal the audit findings. Information tallied on this form is a good indication of whether or not additional contact(s) need to be made with the borrower.

3. *Previous audits and correspondence.* Reference to the prior audit and any correspondence concerning it can be most helpful in the current review. Determine whether corrections requested in the previous year have been made, and whether the auditor has complied with previous suggestions for improvement in the audit report.

C. *Preparing the audit review letter.*

1. *General.* After completion of the "Evaluation Checklist for Audit Reports" which follows, and applying personal judgment, a decision must be made on whether or not to prepare an audit review letter similar to that shown as part of this exhibit.

a. If the audit fully complies with the Audit Program and instructions, a letter is not necessary.

b. If the audit substantially meets the requirements and is lacking in only a few points, ask the borrower to have the auditor furnish this additional information.

c. Audits which are unacceptable should be returned to the borrower for full compliance, indicating the reasons and a timetable for resubmitting.

Evaluation Checklist for Audit Reports

State County

Name of Borrower

Address Case No.

Name of Auditor Project No.

Date of Audit Report Period Covered

1. Auditor's Opinion. (Section C–1*)
____(a) Unqualified
____(b) Qualified
____(c) No Opinion

2. Financial Statement. (Section J–1*)
____(a) Balance Sheet
____(b) Results of Operations
____(c) Statement of Cashflow (Changes in Financial Position)
____(d) Statement of Changes in Retained Earnings
____(e) Notes to the Financial Statements

3. Statement on Auditing Standards. (Section J–2*)
____Audit Report contains a statement that the audit was made in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAGAS)

4. Report on Compliance. (Section J–3*) The auditor should prepare a written report on the tests of compliance with applicable laws, regulations, loan covenants and agreement and grant agreements. This report should address the following areas. (Attachment 2, Section III*):
____(1) Types of services allowed or unallowed.
____(2) Eligibility.
____(3) Matching, level of effort, and/or earmarking requirements.
____(4) Reporting requirements.
____(5) Special test and provisions.

____5. Report on Internal Controls. (Section J–4*)

____6. Reporting Instances of Indication of Illegal Acts. (Section J–5*)

____7. Prior Audit Findings. Section J–6*)

____8. Was report received within 30 days after the end of the borrower's operating year or within a 60 day extension?

____9. Was audit performed by a CPA or LPA? If by an LPA, verify that the LPA was licensed on or before December 31, 1970.

Example Audit Review letter

Dear ____:

We have reviewed your audit report for the period ____ to ____, prepared by ____ on ____. This review was made in accordance with current FmHA regulations and the Audit Program entitled "U.S. Department of Agriculture, Farmers Home Administration-Audit Program." Based on this review, your audit:

1. [ ] Is acceptable. However, the auditor's recommendations concerning

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— should be implemented prior to next year's audit.

2. [ ] Is acceptable but did not include comparative-type financial statements as indicated in Section J-1 of the Audit Program. Please inform the auditor to prepare such statements next year.

3. [ ] Is acceptable but was not submitted within 30 days or an authorized delay of ____ days after the end of the borrower's fiscal year. Please insure that next year's audit is forwarded before ____.

4. [ ] Substantially meets all the requirements. However, the following items were omitted as detailed in the Audit Program, Section J, "Reporting Standards." Please have your auditor comment on the item(s) circled and forward a copy to us. The circled numbers correspond to the 6 items listed in Section J of the Audit Program.

J–1 J–2 J–3 J–4 J–5 J–6

5. [ ] Is returned as unacceptable for the following reason(s). Please have the auditor prepare your audit in accordance with the Audit Program.

a. [ ] It was prepared without audit.

b. [ ] The following financial statements were omitted: (Audit Program, Section J–1)
[ ] Balance Sheet.
[ ] Results of Operations.
[ ] Statement of Cash Flow.
[ ] Statement of Changes in Retained Earnings.
[ ] Reconciliation of Owner's or Partner's Equity.
[ ] The auditor's opinion of Compliance. (Audit Program, Section J–3).

District Director

This letter will be prepared in the District Office. A copy of the audit and the approval memorandum will be sent to the State Office.

Exhibit B—Multiple Housing Management Handbook

Table of Contents

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* References to "Sections" indicate the appropriate section in the FmHA Audit Program booklet.

Exhibits

Title	Exhibit
Management Plan Requirements for FmHA Financed Multiple Family Housing Projects.	B-1
Requirements for Management Agreements.	B-2
Management Agreement for FmHA Multiple Family Housing Projects.	B-3
Questionnaire for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project.	B-4
Questionnaire for Owner Who Proposes Owner-Management of a Multiple Family Rental or Labor Housing Project.	B-5
Monthly and Quarterly Reports (Chart)	B-6
Annual Reports (Chart)	B-7
Miscellaneous Reports or Submittals (Chart).	B-8
Reserved	B-9
Notice of Authorized withdrawal and use of Reserve Funds.	B-10
Equal Housing Opportunity Logotype	B-11
Farmers Home Administration Logotype	B-12
Sample Waiting List	B-13
Reserve Account Tally	B-14

Exhibit B—Multiple Housing Management Handbook

I. *Purpose:* This management handbook prescribes the Farmers Home Administration (FmHA) regulations, policies, and procedures for management of Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects to be used by multiple housing borrowers (owners) and applicants and their management agents and site managers. Several exhibits are included to provide guidance. These regulations are intended to assist borrowers in the successful operation of FmHA-financed rental and cooperative projects.

II. *Definitions:*

Adjusted Annual Income. This is the income of the household members, who live or propose to live in the unit for the next 12 months (including spouse or children of an elderly family in nursing homes or hospitals who would otherwise live in the unit), excluding:

1. $480 for each member of the family residing in the household (other than the tenant, co-tenant, member or co-member, or spouse of either, or foster children) who is under 18 years of age; or who is 18 years of age or older and is disabled, handicapped or a full-time student. The student must carry a subject load considered full-time by the educational institution attended. This

deduction does not apply to an unborn child in the household.

2. $400 for any elderly family;

3. Total medical expenses in excess of 3 percent of annual family income may be deducted for any elderly family. The term "total medical expenses" includes:

a. Medical expenses the tenant or member anticipates incurring over the 12 months following the effective date of the certification;

b. Medical expenses not covered by insurance;

c. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums including medicare, eyeglasses, hearing aids and batteries, medical related travel cost, the cost of a live-in-resident assistant, monthly payments required on accumulated major medical bills including that portion of a household member's nursing home care paid from household income(s).

d. Reasonable attendant care and auxiliary apparatus expenses described in paragraphs 4.a. and 4.b. for each handicapped member of the family to the extent needed to enable any family member (including such handicapped member) to be employed.

4. Total handicap assistance expense in excess of 3 percent of annual family income may be deducted for any nonelderly family following the same guidelines in paragraphs 3.a. and 3.b. to the extent needed to enable any family member (including the handicapped or disabled family member) to be employed. The amount of deduction may not exceed the amount of income received from such employment. Handicap expense includes:

a. That portion of attendant care attributable to specialized medical reasons (the portion attributable to companionship is not counted).

b. Auxiliary apparatus including but not limited to wheelchairs, oxygen equipment, reading devices for the visually impaired and the cost of equipment added to cars and vans to permit their use by the handicapped or disabled family member proportionate to the amount of use by such persons.

5. The amounts paid by the family for the care of minors under 13 years of age may be deducted only to the extent such expenses are not reimbursed. In the case of families assisted by American Indian housing authorities, the amount will be (1) the greater of child care expenses, or (2) excessive travel expenses, not to exceed $25 per family per week. Deductions for these expenses are permitted only when such care is necessary to enable a family member to further his or her education or to be gainfully employed, including the gainful employment of the disabled or handicapped family member. When the deduction is to enable gainful employment the amount may not exceed the amount of income received from such employment. When the deduction is to facilitate further education, the amount must not exceed a sum reasonably expected to cover class time and travel time to and from classes. The tenant file must contain justifying documentation. (Child support payments made on behalf of a minor child who does not reside in the unit may not be deducted as a child care expense.)

Adjusted Monthly Income. This is the amount obtained by dividing the adjusted annual income by 12.

Annual Income. Annual income is the anticipated total amount of income to be received by all members of the household (even if temporarily absent) to be in residence during 12 months following the effective date of Form FmHA 1944–8, "Tenant Certification."

1. *Income Included.* The following are included when determining annual income:

a. The gross amount (before any deductions) of wages and salaries, overtime pay, commissions, fees, tips, and bonuses reasonably expected to be received by all members of the household.

b. The net income reasonably expected to be received from operations of a business or profession or from rental of real or personal property. Expenditures for business expansion or amortization of indebtedness are not considered in the computation of net income. Net losses will be computed as zero. Deductions from gross business or rental income to arrive at net income may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the trade or business of the adult household members under the straight line method of depreciation. An itemized schedule must be provided in support of any deductions from gross income made under the provisions of this section. The schedule should be consistent with the amount of depreciation permitted for these items for Federal income tax purposes under the straight line method of depreciation.

c. Interest, dividends, and other received income as defined under Net Family Assets in this paragraph. On contracts for sale of real estate, deeds of trust or mortgages held by the applicant, tenant or member, only the interest portion of the monthly or annual payments received by the applicant, tenant or member is included as income.

d. The gross amount of periodic payments received from Social Security (including Social Security payment received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements) and other similar types of periodic receipts.

e. Payments received in lieu of earnings, such as unemployment and disability compensation, worker compensation and severance pay.

f. Periodic and determinable allowances, such as alimony and child support payments, which the applicant, tenant or member can reasonably expect to receive.

g. Regularly recurring contributions or gifts received from persons not residing in the dwelling.

h. Any amount of education grants or scholarships or Veterans Administration benefits expected to be received on behalf of tenant, co-tenant, member or co-member, applicant, or other adult that exceeds expenses for tuition, fees, books, equipment, materials, supplies, transportation and miscellaneous personal expenses of the student.

i. All regular pay, special pay (except hazard duty pay for persons exposed to hostile fire) and allowances of a member of the armed forces who is head of the family or spouse, whether or not that family member lives in the unit.

j. Payment received from an adoption incentive program to compensate support of a minor child legally adopted by the tenant household.

k. *Public Assistance.* If the public assistance payment includes an amount specifically designated for shelter and utilities and that amount is subject to adjustments by the Public Assistance Agency according to the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:

(1) The total amount of the public assistance, minus the amount specifically designated for shelter and utilities; plus

(2) The maximum amount which the Public Assistance Agency could in fact allow the family for shelter and utilities.

This is illustrated as follows:

$300—Total Grant.

−150—Amount specifically designated for shelter and utilities.

$150—Amount of grant including shelter and utility allowance.

+180—The maximum the agency could provide for this family for shelter and utility allowance.

$330—Amount per month to be included in Annual Income.

2. Exempted Income. The following are not included in annual income:

a. Income of minors (including foster children) under 18 years of age except as specified under 1.d. of the definition of Annual Income in this paragraph. (Tenant, co-tenant, member, co-member, or spouse of either may never be considered minors.)

b. In the case of contracts for sale of real estate, mortgages or Deeds of Trust held by the tenant, co-tenant, member, or co-member, the principal portion of the payments received by the tenant or co-tenant, member, or co-member.

c. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

d. Payments received for the care of foster children.

e. Temporary, nonrecurring or sporadic income (including gifts).

f. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker compensation policies, and settlements for personal or property losses.

g. Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses for any household member. Medical expenses may include those expenses incurred by disabled or handicapped residents so that they may live independently (e.g., attendant care).

h. Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation and

miscellaneous personal expenses of the student. Any amounts of such scholarships or veterans payments, which are not used for above purposes and are available for subsistence, are considered to be income of tenant, co-tenant, member or co-member, or applicant.

i. Student loans.

j. The special hazard duty pay to a household member serving in the Armed Forces away from home, who is exposed to hostile fire.

k. Payments received pursuant to participation in the following programs:

(1) Programs under the Domestic Volunteer Service Act of 1973 including, but not limited to, the National Older Americans Volunteer Programs (OAVP) of the Federal Action Agency for persons age 60 and over including the:

(i) Retired Senior Volunteer Program (RSVP).

(ii) Foster Grandparent Program (FGP).

(iii) Senior Companion Program (SCP)

(iv) Older American Committee Service Program.

(2) National Volunteer Antipoverty Programs such as VISTA, Peace Corps, Service Learning Program and Special Volunteer Programs.

(3) Small Business Administration Programs such as the National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and,

(4) Title V—Community Service Employment for Older Americans which include:

(i) Senior Community Service Employment Program.

(ii) National Caucus Center on Black Aged.

(iii) National Urban League.

(iv) Association National Pro Personas Mayors.

(v) National Council on Aging.

(vi) American Association of Retired Persons.

(vii) National Council of Senior Citizens.

(viii) Green Thumb.

(5) Payments received from a State or local low income energy assistance program.

l. Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

m. Payments received under the Alaska Native Claims Settlement Act.

n. Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.

o. Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.

p. Payments received from the Job Training Partnership Act.

q. Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

r. The first $2,000 of per capital shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an Indian tribe by the Secretary of Interior.

s. Any funds which a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled.

Note: The Department of Housing and Urban Development (HUD) periodically publishes a notice in the **Federal Register** identifying the programs and benefits that qualify for this exemption.

t. Income of a Resident Assistant, as defined in this paragraph.

u. Amounts received under training programs funded by HUD.

v. Amounts received by a disabled person (including a blind person) that are disregarded for a limited time for purposes of Supplemental Security Income (SSI) eligibility, and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).

w. Amounts received by a participant in other public assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program.

x. Gifts, payments or credits provided by the borrower for the same purposes as interest credit or rental assistance for the benefit of residents in accordance with an FmHA approved budget when needed to alleviate or avoid financial distress in a project for a temporary specified time period identified by FmHA.

y. Interest accrual to an annuity that is not withdrawn.

z. Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the IN RE Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.)

aa. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 94 Stat 1785).

Borrowers. "Borrowers" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations and have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

Caretaker. The individual(s) employed by the borrower or the management agent as specified in the management plan to handle normal maintenance and upkeep of the project.

Cash Value of Assets. Current market value less cost to convert assets to cash.

Chore Service Worker. An individual who provides intermittent assistance essential to the well being of a tenant or member whose services are compensated by a Federal, State, or local assistance program. A chore service worker will not be a resident of the tenant's or member's living unit.

Congregate Housing. Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

Domestic Farm Laborers. Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either (1) are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons, and as further defined in terms of disabled or retired domestic farm laborers in subpart D of part 1944 of this chapter.

Elderly (Senior Citizen). A person who is at least 62 years old. The term elderly (senior citizen) also means Individuals with Handicaps or Disabilities as separately defined in this paragraph, regardless of age.

Elderly Family. A household where the tenant, co-tenant, member, or co-member (individual) is at least 62 years old, disabled or handicapped as defined separately in this paragraph. An elderly family may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped or disabled person's care and well-being. (To receive an elderly family deduction, the elderly, disabled or handicapped person must be the tenant, co-tenant, member or co-member.)

Eligibility Income. The calculated adjusted annual income which is compared to the income limits in Exhibit C to subpart A of part 1944 of this chapter.

Familial Status. This term means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection against discrimination afforded by familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Forms Manual Insert (FMI). A type of directive which includes a sample of the form and complete instructions for its preparation, use and distribution.

Group Home. Housing that is occupied by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can also be a multi-unit structure.

Household. One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.

Individual with Disability. A person is considered disabled if the person meets the criteria of either of the following:

1. The person has an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, but with use of auxiliary apparatus may be gainfully employable, which:

a. Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death,

b. Substantially impedes the ability to live independently,

c. Is of such a nature that such ability could be improved by more suitable housing conditions, or

d. In the case of a blind person who is at least 55 years old (within the meaning of blindness as determined in Section 223 of the Social Security Act), is unable, because of the blindness, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

Note: Receipt of veteran's benefits for disability, whether service-oriented or otherwise does not automatically establish disability.

2. The person has a developmental disability; a severe, chronic disability which;

a. Is attributable to a mental or physical impairment or combination of mental or physical impairment;

b. Was manifested before age 22;

c. Is likely to continue indefinitely; and

d. Results in substantial functional limitations in three or more of the following areas of major life activity;

(1) Self care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

e. Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

Individual with Handicaps.

1. A person with a physical or mental impairment, that:

a. Is expected to be of long-continued and indefinite duration;

b. Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

2. The term handicapped (or handicap) further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. THIS TERM DOES NOT INCLUDE CURRENT ILLEGAL USE OF OR ADDICTION TO A CONTROLLED SUBSTANCE. As used in this definition.

a. Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical and mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

b. Major life activities means functions such as caring for one's self, performing major tasks, walking, seeing, hearing, speaking, breathing, learning and working.

c. Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

d. Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantively limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has one of the impairments defined in paragraph 2 a 1 and 2 a 2 of this definition but is treated by another person as having such an impairment.

LH means Farm labor housing loans and/or grants.

Limited Equity. The amount of funds which have accumulated in the cooperative member's patronage capital account and as further described in subpart E to part 1944 of this chapter.

Low-Income Household. A household having an adjusted annual income within the maximum low-income limit stated in Exhibit C of subpart A of part 1944 of this chapter (available in any FmHA Office).

Management Agent. The firm or individual engaged by the borrower and charged with the responsibility to manage the project in accordance with a written agreement.

Management Agreement. The written agreement between the borrower and management agent setting forth the management agent's responsibilities and fees for management services.

Management Fee. The compensation for providing overall management services for a Multiple Family Housing (MFH) project as described in the management plan. The fee is compensation for the time, expertise and knowledge required to direct and oversee the present and future operation of the project. Project management fees may include the cost of providing day-to-day reasonable management activities of the project such as (1) developing and modifying operating budgets, (2) renting the units, (3) collecting the rent, (4) preparing reports to FmHA, (5) normal project bookkeeping, (6) maintaining tenant or member records, (7) arranging for the proper maintenance of the project, and (8) making inspections, etc. A management fee does not include the compensation paid to a site manager.

Management Plan. The primary management charter, constituting a comprehensive description of the detailed policies and procedures to be followed in managing a project.

Management Reserve. That portion of the cooperative occupancy charge which is designated for payment of professional management services.

Migrant. A domestic farm laborer who works in any given local area on a seasonal basis and relocates his or her place of residence as farm work is obtained in other areas during the year.

Minor. The term minor includes persons under 18 years of age other than the tenant, co-tenant, member, or co-member. Persons aged 18 and over who are full-time students are treated as minors. The tenant, co-tenant, member, or co-member may never be counted as a minor.

Moderate-Income Household. A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA Office).

Net Family Assets.

1. Net family assets include the value of savings, certificates of deposit and dollars in checking accounts reported as "cash on hand." (If third party verification is needed, it will be such amounts reported on the day of verification.) This definition also includes the net cash value of cooperative housing shares, real property, market value of bonds and other forms of capital or personal property held as investments minus debts against them, minus cost of converting such assets to cash. Examples of conversion costs are penalties for early withdrawal, broker/legal fees assessed to sell an asset and settlement costs for real estate transactions.

2. Net family assets also include the value or equity of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) in excess of the consideration received therefore during the two years preceding the effective date of certification/recertification. In the case of a disposition as part of a divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

3. Income from net family assets which is included in annual income is determined as follows:

a. If net family assets equal $5,000 or less, annual income includes the actual income derived from the net family assets.

b. If net family assets exceed $5,000, annual income includes the greater of:

(1) Actual income derived from all net family assets, or

(2) A percentage of the value of such assets based on the Bank Passbook annual savings rate.

4. Net family assets exclude:

a. Interests in Indian trust land,

b. The value of *necessary* items of personal property such as furniture and automobile(s), and the debts against them,

c. The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

d. The value of a trust fund (i.e. for a minor or a legally incompetent household member) that has been established and the trust is not revocable by, or under the control of, any

member of the household, so long as the fund continues to be held in trust.

e. A vehicle specially equipped for the handicapped.

f. Life insurance policies.

g. Share value in the housing cooperative unit in which the family resides.

h. Prepaid funerary arrangements and expenses.

i. Retirement funds not accessible by a household member.

j. Assets legally owned but not accessible or that accrue income to someone else.

New Housing. Newly constructed or substantially rehabilitated RRH, RCH, or LH project financed by FmHA. For new construction rental assistance (RA) purposes, it further means before any units are occupied.

Non Profit Corporation. A corporation which (1) is organized and operated for purposes other than making gains or profits for the corporation or, its members; (2) is legally precluded from distributing to its members any gains or profits during its existence; and (3) in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipal corporation which will operate the housing for the same or similar purposes.

Occupancy Charge. The amount of money charged a cooperative member to cover his/her proportionate share of the cooperative's operating costs and cash requirements.

Occupancy Surcharge. A monthly surcharge on occupied units in projects where a loan was made or insured pursuant to a contract entered into on or after December 15, 1989. This surcharge will be collected from borrowers by FmHA and set aside to offset any rent increases which may result when the project becomes eligible for a guaranteed equity loan, 20 years from the date of the last loan made on the project.

Operational Housing. A completed RRH, RCH or LH Project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants or members.

Pet. A commonly accepted domesticated household animal (such as dog, cat, bird, etc.) owned or kept by a tenant or member.

Profit Basis. Applies to an individual or organization applicant who will operate the housing at rental rates low- and moderate-income nonelderly or nonhandicapped persons, and/or elderly and handicapped persons of any income can afford, where return on initial investment is not limited to a certain percentage per year.

Project. A project is the total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

Rental Agent. The individual responsible for the leasing of the units. If other than the borrower, this individual may be hired by the borrower, or the management agent as specified in the management plan.

Rental Assistance (RA). RA, as used in this exhibit, is the portion of the approved shelter cost paid by FmHA to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV of this exhibit. When the monthly gross tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the tenant that difference according to paragraph IX.A.2. of Exhibit E to this subpart. RA used in cooperative housing will be calculated in the same manner.

Resident Assistant. A person(s) residing in a housing unit who is essential to the well-being and care of the senior citizen(s) or handicapped person(s) residing in the unit. The resident assistant is not considered to be part of the household and cannot be a dependent of the household for tax purposes and is not subject to the eligibility requirements of a tenant or member. The resident assistant receives compensation from sources outside the project. A resident assistant is not a chore service worker.

RCH means Rural Cooperative Housing Loans.

RHS means Rural Housing Site loans.

RRH means Rural Rental Housing loans.

Service Agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service and the length of time the service will be provided.

Service Plan. A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Shelter Cost. Consists of basic and/or note rate rent plus utility allowance and occupancy surcharge, when required. Basic and/or note rate rent must be shown on the project budget for the year and approved according to Paragraph XII of this exhibit. Utility allowances, when required, must be determined and approved according to Exhibit A-6 to subpart E to part 1944 of this subpart. Any change in rental rates or utility allowances must be processed according to Exhibit C to this subpart. The shelter cost in a cooperative housing project will consist of occupancy charge plus utility allowance.

Site Manager. The individual employed by the borrower or the management agent who lives at or near the project site and is responsible for the day-to-day operations of the project. A site manager residing at the project site may also be referred to as a resident manager.

Tenant. A tenant also includes a co-tenant and is a person(s) who has signed a lease and is, or will be, an occupant of a unit in an RRH, or LH project. A person who has ceased to be an occupant, but whose personal property remains in the rental unit, will be considered a tenant until such personal property is removed voluntarily or by other legal means.

Tenant Contribution. The portion of the approved shelter cost, including occupancy surcharge, paid by the tenant household (tenant rent). For tenants not receiving HUD Section 8, this amount will be calculated according to Form FmHA 1944-8. For tenants receiving HUD Section 8, this will be the amount referred to on HUD Form 50059, "Certification and Recertification of Tenant Eligibility," (or other HUD approved Form), as family contribution. The proportion of tenant income and adjusted income paid as the tenant contribution will vary according to the type of subsidy provided to the household.

Very Low-Income Household. A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of subpart A or part 1944 of this chapter (available in any FmHA office).

III. *Borrower Responsibilities:*

A. *General.* All borrowers are responsible for:

1. Understanding the distinction between FmHA supervised credit and the credit provided by other Federal, State, or conventional sources.

2. Meeting the objectives for which the loan and/or grant was made and complying with the respective program requirements.

3. Understanding the unique characteristics and function of their particular type of borrower entity as provided by charter, articles of incorporation, by-laws, and/or statute.

4. Assuring that a site manager or contact person is in close proximity to their MFH project.

5. Complying with the provisions of their security instruments and any directive issued by FmHA.

6. Following the approved management plan and reporting to FmHA any changes of management plan, and when appropriate, change of management agent.

B. *Borrowers Without a Loan Agreement.* Unless otherwise specified, these borrowers are exempt from the requirements of this subpart, except for Exhibit C (Rental and Occupancy Charge Changes), as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA. However, these borrowers must provide evidence of tenant income eligibility by properly completing a Form FmHA 1944-8 for each tenant as required by the FMI.

C. *Borrowers With a Loan and/or Grant Agreement in a Multiple Unit Project.* These borrowers are responsible for meeting the requirements and conditions of their agreement/resolution and the requirements of this subpart.

D. *Borrowers With Governing Bodies.* The elected or appointed officials comprising the governing body of the borrower are responsible for:

1. Maintaining records of all current members and maintaining membership at the required level.

2. Holding meetings as required by the organizational documents, and as otherwise necessary, to provide proper control land management of its operations, and to keep the membership informed.

3. Coordinating and monitoring activities of established cooperative committees.

E. *Borrowers With a Membership.* Members of a membership type borrower are responsible for full support of the project and operation by:

1. Promptly paying any dues, fees, and other required charges.

2. Electing responsible officials.

3. Complying with organization rules and regulations.

4. Participating in annual and special meetings.

5. Participating in established cooperative committees to which they have voluntarily accepted assignment.

6. Carrying out duties and services necessary to maintain the cooperative property for which they have voluntarily accepted assignment.

F. *Delegation of Responsibility and Authority.* The borrower may delegate or assign management responsibilities to a property manager such as a management agent, a site manager, or as appropriate, a caretaker. Delegations or assignments of duties and responsibility will be included in written documents such as management agreements and job descriptions. FmHA will hold the borrower ultimately responsible for management of the project. FmHA may require a borrower to change the plan of project management and/or make appropriate redelegations of project management responsibility to achieve program objectives.

IV. *Rent Subsidy Opportunities:* The available subsidy programs should be considered at the time of developing a project proposal and during project operation as they may be available to meet the tenants' needs. Congregate type services such as meals, limited homecare, medical, transportation and social activities are not included in these subsidy programs. The subsidy programs are as follows:

A. *FmHA Interest Credit—RRH and RCH Loans.* Regulations are contained in Exhibit H to this subpart and include:

1. *Plan I*—Only those borrowers who received this type of interest subsidy prior to October 27, 1980, may continue to utilize this Interest Credit Plan. Those broadly-based nonprofit corporations and consumer cooperatives may continue operating under this plan provided:

a. Occupancy is limited to very-low or low-income nonelderly; very low-, low- and moderate-income elderly, disabled or handicapped persons.

b. Budgets and rental rates are based on a 3 percent loan amortization.

2. *Plan II*—This interest subsidy is available to broadly-based nonprofit corporations, consumer cooperatives, State or local public agencies, or to other organizations and individuals operating on a limited profit basis.

a. Occupancy is limited to very-low, low- and moderate-income persons except as noted in paragraph VI.B.2.e. of this exhibit.

b. Budgets are prepared showing two rental or occupancy charge rates, basic and note rate. The minimum (basic) rate for persons not receiving rental assistance is based on a 1 percent subsidized rate. The maximum (note rate) rate is based on the loan amortized at the interest rate shown in the promissory note.

c. Tenant's or member's contribution for shelter cost, calculated according to the FMI for Form FmHA 1944–8, may not exceed the highest of:

(1) Thirty (30) percent of monthly adjusted income, or

(2) Ten (10) percent of gross monthly income, or

(3) If the household is receiving payment for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter costs (see example in 1k of the definition of Annual Income in paragraph II of this exhibit), or

(4) The basic rent or occupancy charge when no RA is available.

d. Any tenant or member contribution increase caused by the change from 25 percent of the household adjusted income to the greater of c (1), (2), or (3) or by other provisions of Federal Law or Federal regulation is restricted to not more than 10 per centum in any 12 month period, as calculated on Form FmHA 1944–8, unless the increase above 10 per centum is attributable to an increase in income.

e. RRH borrowers whose loans were approved on or after August 1, 1968, may convert from Plan I to Plan II. When they are presently a full profit operation, they may convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit and RA agreement according to Exhibit H of this subpart.

f. RRH borrowers with Plan I Section 8 interest credit agreements may change to Plan II when the 1 percent or 2 percent interest reduction is insufficient for the HUD contract rent to meet budgeting needs. The change of interest credit plan will be approved in accordance with paragraph VIII.B. of Exhibit C of this subpart. A new Interest Credit Agreement is required.

B. *Rental Assistance (RA) Program—FmHA.* This is a subsidy program available to RRH, RCH, and LH borrowers to assist very-low and low-income tenants and members in paying their shelter cost. RA is not authorized for tenants or members whose adjusted income is above the low-income level. RA is not available to LH borrowers who are individual farmowners, partnerships, family corporations, or association of farmers. RRH borrowers with loans approved on or after August 1, 1968, must be operating under, or change to, Interest Credit Plan II to receive RA. Full profit borrowers may utilize RA by converting to a Limited Profit Operation. The provisions of the RA program are covered in detail in Exhibit E of this subpart.

C. *Department of Housing and Urban Development (HUD)—Section 8 Housing Assistance Payments or Housing Voucher Program.* These subsidy programs are administered by HUD or the local public housing agency. Projects operating under the Memorandum of Understanding between FmHA and HUD will also be subject to the requirements of the Housing Assistance Payments (HAP) Contract executed by the borrower. Projects accepting tenants utilizing Section 8 certificates or housing voucher assistance assigned by a local public housing agency will also comply with any requirements imposed by such agency. However, in all cases, tenants receiving Section 8 assistance must meet the eligibility requirements specified in paragraph VI. B. of this exhibit. Requirements that conflict with FmHA requirements should be referred to the District Director for guidance. (Generally, the most restrictive HUD or FmHA requirements or limitations will apply.)

D. *State Provided Subsidy.* This is a subsidy program provided and funded by some states and available to RRH borrowers to assist tenants on approximately the same basis as the FmHA RA Program. The assistance is in accordance with a CONTRACT between the borrower and the state and concurred in by FmHA.

E. *Privately Provided Subsidy.* This is a subsidy program whereby the project owner(s) enter into an AGREEMENT with FmHA to provide and fund subsidy to tenants of the project on approximately the same basis as the FmHA RA Program. In some instances, the contract may include a limit on the number of units and a PER UNIT CEILING on the amount of assistance.

V. *Management Operations:*

A. *Management Plan.* A comprehensive management program is essential to the successful operation of a project. A written plan is the primary ingredient which should describe the detailed policies and procedures in managing the project. Unless program regulations specifically permit an exception, a management plan is required for: (1) All proposed multiple housing projects; (2) existing projects in which the subsequent loan, transfer, or reamortization, was approved after October 27, 1980; and (3) any other multiple housing projects where the State Director determines a management plan is needed because of loan delinquency or default, neglected maintenance, or known landlord-tenant problems. The plan should be developed in detail commensurate to project size and complexity and should be reviewed annually and updated at least triennially by the borrower. To reflect project needs and to meet current program objectives, use of an addendum is permitted when few changes are made in the update of the plan. Exhibit B–1 of this subpart outlines the requirements of the plan.

B. *Management Agreement.* The management agreement is the primary document by which the management agent is guided, evaluated, and compensated. It bears a close relationship to the management plan. A management agreement is required except in cases where the borrower (owner) fills the role of manager. Requirements of a management agreement are listed in Exhibit B–2 of this subpart. Exhibit B–3 of this subpart is a sample management agreement. The two types of agreements acceptable to FmHA, are described as follows:

1. The owner hires a professional management agent to oversee and operate the project. The management agent may provide a site manager for on-site management and/or caretaker when justified by the size of the project. A qualifications statement by the management agent is required by the borrower and FmHA. Exhibit B–4 of this subpart provides a guideline for preparing the statement.

2. The owner maintains all or a part of the management role. The owner may use the services of a site manager in providing onsite management and/or services of a caretaker when justified by the size of the project.

FmHA requires a qualifications statement by the owner who proposes to personally provide the management to determine management capability. Exhibit B-5 of this subpart provides a guideline for preparing the statement.

C. *Responsibility.* The management plan and management agreement must be based on applicable provisions of local, State, and Federal statutes and the regulatory requirements of the loan used to finance the project, regardless of the management system used. The owner remains totally responsible to FmHA for the project, regardless of the authority delegated by the owner to the management agent.

D. *Compensation.* Compensation is remuneration for performance of management duties and responsibilities as described in the management plan.

1. *Projects with management agent.* The amount of compensation is to be negotiated between the owner and the management agent within established FmHA guidelines for the State or area. The amount of compensation must be reasonable, typical when compared with similar services available in the area, and earned for actual services. Any services actually performed by a site manager shall not be paid from the management fee. The amount of compensation or "fee" should generally be stated on a monthly per occupied unit or as a percentage of rents collected. Rents collected could include any RA and/or interest credit subsidy. The fee should vary from project to project depending upon size, complexity, services to be provided, type of project, age of loan and other relevant factors, such as comparable fees for similar projects in the area in which the project is located.

a. The management agreement must specifically define the management agent's responsibilities for paying defined project services for the owner. Such project services may either be paid directly from the owner's General Operating Account or be paid to the management agent from the owner's General Operating Account, upon suitable documentation, or reimbursed, when the Agent advances such payment on behalf of the project. The cost for these project services will not be included in the Agent's management fee. These costs may include the following budget line items:

(1) Cost of salary and wages of the project's site manager and/or caretaker. (These persons will be hired and/or dismissed by the management agent and their compensation will not be part of the management fee.) The management plan must specify the duties of the site manager.

(2) Legal fees for the project.

(3) Auditing fees for the project.

(4) Repair and maintenance costs for the project.

b. The management agreement must also define costs that accrue to the management agent, but not directly to the project. The management fee will be for costs that include but are not limited to:

(1) Monitoring project operations, recruiting, hiring, training and supervision of on-site staff.

(2) Establishing and maintaining procedures/system for project bookkeeping, reports, records, and accounts.

(3) Analyzing and solving project problems.

(4) Preparation and distribution of required reports of operations and maintenance for the owner and the FmHA.

(5) Preparation of requests for reserve withdrawal, rent adjustment, rehabilitation and energy conservation proposals, plans and specifications.

(6) Review of tenant certifications and submission of monthly RA requests and monies collected for occupancy surcharge. Assure protection of project receipts and make project invoice and payment disbursements.

(7) Management agent's office overhead including office space and utilities, clerical staff and training, agent's office bookkeeping, office supplies and equipment, transportation and telephone calls to projects, office data processing systems and postage.

(8) Supervision by management agent (time, knowledge, and expertise) of overall operations and capital improvements and investment of project funds.

(9) Keeping the project owner informed about project operations.

(10) Development, preparation, and revision of management plans and/or agreements.

2. *Owner managed projects.* The owner will be authorized to manage the rental project only when FmHA determines in writing that the owner (either as the individual borrower or as a part of an organizational borrower) has the necessary management capabilities.

a. Projects with owners with identity-of-interest relationships to the management agent will not be considered as an owner managed project. A typical management fee may be charged as an expense to the project. The compensation must be according to the provisions of paragraph V D of this exhibit and be reasonable, earned, and not exceed the normal cost of similar services, had such services been provided by an independent management agent.

b. Since cooperatives are to be organized as self-managed entities, the board of directors is not expected to have management experience. In lieu of this experience, the adviser to the board will provide management guidance during the formative years of the cooperative. Under the adviser's direction, the cooperative will become accustomed to this role and thus gain the ability to assume management responsibilities. If, after the required trial period outlined in Subpart E of Part 1944, the cooperative's board is unable to assume management responsibilities, professional management will be hired by the cooperative. We would expect the amount of compensation paid to a cooperative adviser to be less than that paid to other types of management agents in order to provide the members with some equity in the early years. (See Subpart E of Part 1944 of this chapter).

3. *Initial Rent-up Fees.* Payment of fees for a one-time effort to achieve initial rent-up of a newly constructed rental project is permitted when it is determined necessary and documented by the FmHA loan approval official and the loan applicant. Rent-up fees should be paid on a per-unit basis only after each unit has been occupied by the initial tenant. Payment of the rent-up fee and other project management start-up expenses should generally be made from the 2 percent initial operation and maintenance fund as follows:

a. In owner managed projects or when there is an identity of interest as defined in § 1924.4 (i) of subpart A of part 1924 of this chapter between the management agency and the borrower, such as the owner or the owner's principals or family members owning an interest in the management firm (or vice versa), initial rent-up fees may be allowed but only up to reasonable actual cash expenditures.

b. When there is not an identity of interest, a person or firm, preferably the management agency, may be compensated at a rate negotiated with the applicant/borrower that represents reasonable compensation for the incurred marketing cost and project management start-up expenses.

E. *Site Manager and/or Caretaker Services.* The borrower is responsible for describing the plan for site management in the management plan. The plan needs to identify whether the site manager will occupy one of the project units as a revenue producing unit or as a rent free unit, or will live away from the project. The one-site services of a site manager and/or caretaker may be used when justified by the size, composition and location of a project, whether the project is managed by a management agent or by the owner. There should be a written agreement between the owner or the management agent and the site manager to define the role and duties and compensation for the site manager and to provide a basis for evaluating the site manager's performance. FmHA may require an on-site resident manager and/or caretaker to assure that the loan objectives are met and/or to protect the tenant's or Government's interests. It is not mandatory that the site manager and/or caretaker meet tenant occupancy eligibility requirements. However, if management considers the occupied unit to be a rental unit, the rent paid will be determined according to the site manager's/caretaker's income.

1. *Calculation of rental rate for site manager or caretaker.* The cost of providing the unit occupied by the site manager or caretaker will be included in the project budget the same as the cost for other non-revenue producing portions of the project such as a laundry or community room.

The rental rate will be determined as follows:

a. When used as a revenue producing unit at approved rental rates, the salary paid to the site manager and/or caretaker will be included in the project operation and maintenance expenses. The same amount will be included in the annual income of the site manager and/or caretaker. The site manager and/or caretaker may be an eligible or ineligible tenant and their rent contribution as shown on the tenant certification form, will be based on their total income from all sources. Occupancy surcharges will be applicable in eligible projects.

b. When the unit is used as a non-revenue producing unit, the project cost of providing the unit will be treated the same as those of

other non-revenue producing portions of the project. Project rental rates will be established as if the unit did not exist as living quarters. Debt payment will be as if the unit were rented at basic rent. A tenant certification form will not be prepared for this situation. Occupancy surcharge will not be collected in non-revenue producing units.

2. *Owner Occupancy.* With the prior approval of the State Director, owners may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or a site manager. The size, composition, and location of the project must justify the services of a site manager or caretaker, and the State Director must determine the owner is capable of performing these services. The rental rate will be included as described in paragraph V E 1 of this exhibit.

F. *Projects Without a Site Manager and/or Caretaker.* Projects without a site manager and/or caretaker must have, at a minimum, a tenant who will serve as a contact person or have a person who is easily accessible to the project who is able to represent the project manager or owner on maintenance and management matters.

G. *Supplemental Services.* Supplemental services include laundry, vending machine, commissary store, or similar tenant benefit services.

1. *Borrower Provided Supplemental Services.*

a. Income from supplemental services and/or equipment and expense of acquisition and replacement cost shall be planned and recorded as part of the annual operating budget.

b. Failure to account for all proceeds is a fraudulent act.

2. *Consignee Provided Supplemental Services.*

a. A written contract between the borrower and consignee is required. The contract terms should follow "industry" standards for the type of service.

b. Comparability in all respects to conventional supplemental services contracts shall govern contract with identity of interest between the contracting parties.

c. The borrower's share of income will be shown as planned and actual income in the project operating budget.

d. Failure by the contractual parties to account for all proceeds is a fraudulent act.

VI. *Renting Procedure:* Preparations for initial rent-up, occupancy and maintenance will begin 90–120 days ahead of the projected completion date of the project. This procedure will include a prerent-up conference between the FmHA District Director, the borrower, and the person(s) responsible for project management. Decisions to be made concern the advertisement of available units, affirmative marketing practices, tenant eligibility, and tenant selection criteria. It is important that this conference precede active marketing and the receipt of tenant applications.

A. *Affirmative Fair Housing Marketing Plan.* All borrowers with *five* or more rental units must meet the requirements of § 1901.203 (c) of subpart E of part 1901 of this chapter by preparing and submitting an Affirmative Fair Housing Marketing (AFHM) Plan on HUD Form 935.2. Records must be maintained by the borrower reflecting efforts to fulfill the plan and will be subject to review by FmHA during compliance reviews for Title VI of the Civil Rights Act of 1964. *The approved plan will be made available by the borrower for public inspection upon request at the borrower's project site, rental office, or at any other location where tenant applications are received for the project.* In developing the plan, the following items should be considered:

1. *Direction of Marketing Activities.* The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area regardless of race, color, religion, sex, age, or familial status, national origin, or handicap (must possess capacity to enter into legal contract). The plan must show which efforts will be made to reach very low-income, low-income group or groups who traditionally would not be expected to apply for such housing without special outreach efforts.

2. *Marketing Program.* The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc., are best suited to reach those very low-income, low-income group or groups who otherwise might not apply for occupancy in the project. Appropriate social agencies and networks should be contacted to assist in reaching elderly (senior citizens), handicapped persons, etc.

a. *Posters, Brochures, Etc.* Any radio, TV or newspaper advertisement, pamphlets, or brochures used must contain the appropriate equal opportunity statements i.e. the fair housing logotype and the equal housing opportunity slogan. A copy of this proposed material is to be submitted along with the HUD Form 935.2 for approval. The nondiscrimination poster entitled "And Justice For All," the "Fair Housing" poster and the tenant grievance and appeals procedure must be displayed in the rental office. If the rental office is not on site, the items must be displayed in a common conspicuous place on the site.

b. *Permanent Project Signs.* Permanent project signs are required for all MFH projects approved on or after September 13, 1977. To meet minimum requirements, the sign:

(1) Must be located at the primary site entrance and be readable and recognizable.

(2) Must be located near the site manager's (or contact person's) office when the project has multiple sites. Portable signs will be placed where vacancies exist at other site locations of a "scattered" project.

(3) May be of any shape.

(4) For projects of 8 or more units, must have not less than 16 square feet of area. Smaller projects may have smaller signs.

(5) Including its supports, must be made of durable material.

(6) Must include the project name.

(7) Must show rental information including but not limited to the site manager's office location and telephone number where applicant inquiries may be made.

(8) Must show the equal housing logotype (house symbol) together with the slogan "Equal Housing Opportunity" OR the statement "We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin." The logotype and slogan must be permanently affixed, clearly visible and should be at least equal to approximately 3 to 5 percent of the sign area and appear as shown in Exhibit B–11 of this subpart.

(9) Must display the FmHA logotype and name shown in Exhibit B–12 of this subpart.

c. *Community Contact.* Community leaders and special interest groups such as community, public interest, religious organizations and organizations for the handicapped should be contacted in small communities without formal communication media aimed at the group or groups least likely to apply for available housing. Community contacts should also be used in reaching specific elements of the community such as the elderly or particular ethnic groups determined least likely to apply for the available housing.

d. *Rental Staff.* All staff persons responsible for renting the units must have had training provided on Federal, State and local fair housing laws and regulations and in the requirements of fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair housing must be attached to the AFHM plan.

3. *Marketing Records.* The borrower will be required to develop and maintain a system to provide data according to subpart E of part 1901 of this chapter, pertaining to compliance reviews, and to indicate to what extent minority groups are being benefited.

B. *Tenant Eligibility.* The rental agent of the project must be knowledgeable about the FmHA tenant eligibility requirements as they relate to a particular project. FmHA loans require occupancy of the unit by eligible tenants. Except for migrant farmworker tenants in LH projects, tenant/applicants must certify on their application that the housing they will occupy is/will be their permanent residence; such tenants will further certify that they do/will not maintain a separate subsidized rental unit in a different location.

1. *Eligible Tenants.* The following tenant eligibility criteria will apply where appropriate, unless otherwise authorized such as in the case of LH as described in Subpart D of Part 1944 of this chapter.

a. To determine eligibility for occupancy the applicant's Eligibility Income must be as defined in paragraph II and include income from Net Family Assets as defined in paragraph II of this exhibit.

b. The adjusted annual income must meet the definition of very low-, low- or moderate-income as defined in this exhibit as required for that specific project for applicant selection, tenant contribution and continued occupancy.

c. To determine eligibility for continued occupancy, the tenant's adjusted annual income must be determined at least once

every 12 months. When the tenant's adjusted annual income exceeds the moderate-income limit established for the area in which the project is located, the tenant is no longer eligible and will be required to vacate the project according to the terms of the lease and paragraph VI.B.5. of this exhibit. Continued occupancy by cooperative members will not be affected by this income criteria. Cooperative members, after initial certification of income eligibility, may remain members regardless of income.

d. In RRH projects operating on a Plan I basis, tenants will:

(1) Be a very low-, low-, or moderate-income elderly, disabled or handicapped person.

(2) Be a very low or low-income nonelderly, nondisabled, or nonhandicapped person.

e. In RRH projects operating on a nonprofit or limited profit Plan II basis, tenants will be a very low-, low-, or moderate-income person regardless of age, disability or handicapped condition.

f. In RRH projects operating on a full-profit basis, tenants will:

(1) Be an elderly, disabled or handicapped person of any income.

(2) Be a very low-, low-, or moderate-income nonelderly, nondisabled or nonhandicapped person.

g. In LH projects designed and operated either for year-round or seasonal occupancy, tenants will be domestic farm laborers and include such tenants with familial status.

h. Occupany in RRH project units designated by FmHA as:

(1) Family housing may be by any combination of elderly, disabled or handicapped, and/or nonelderly, nondisabled or nonhandicapped tenants including those tenants with familial status.

(2) Elderly housing must be by elderly, disabled and/or handicapped tenants but not restricted exclusively for use by disabled and/or handicapped tenants. Children may be included in those units housing tenants with disability or handicap.

(3) Housing which consists of specific units in a project designated as family housing and other units designated as elderly housing units should be governed by (1) and (2) of this paragraph except that families will have priority to occupy the family housing units in building(s) designed primarily for family housing.

i. Tenant households must generally be capable of caring for themselves and must meet the following criteria:

(1) Not be totally dependent on others to be able to vacate the unit for their own safety in emergency situations. Tenant households are eligible for occupancy when a member of the household is disabled if adequate care and assistance is provided by the tenant household for the safety and well-being of the disabled household member.

(2) Possess the legal capacity to enter into a lease agreement, except where a legal guardian may sign:

(a) In the case of tenants who are declared legally incompetent but can otherwise live independently and abide by the lease terms.

(b) In the case of tenants residing in a congregate housing project.

(3) Persons meeting the definition of Elderly (Senior Citizen) in paragraph II of this exhibit may be considered an eligible tenant or co-tenant if more suitable housing will improve their ability to live independently. The disability or handicap may be supported by a doctor's certificate or other documentation if the handicap is not obvious by observation and must meet either the definition of Individual with Disability or Individual with Handicap in paragraph II of this exhibit. Receipt of veterans benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. The owner/manager must make the determination based upon evaluation of the applicant's condition and the documentation presented. Exhibits J–1 and J–2 of this subpart may be useful during this evaluation.

j. For LH projects and units in RRH projects specifically designed and designated for the elderly, disabled and/or handicapped as defined by FmHA, occupancy is limited solely to those meeting the eligibility requirements for the specific type of project (i.e., domestic farm laborers, elderly, disabled and/or handicapped). Eligible occupants in these projects may also include other persons who are usually household members of the domestic farm laborer, elderly, disabled or handicapped person. Resident assistants or chore workers will not be considered to be members of the tenant household.

k. A student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in an RRH or RCH project may be considered an eligible tenant when all of the following conditions are met:

(1) Is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(2) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(3) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(4) The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

l. A former domestic farm laborer may continue occupancy of an LH project after retirement or after becoming disabled if the farm laborer was admitted to the project under FmHA requirements.

m. A tenant who does not personally reside in a rental unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, is considered ineligible and shall be required to pay note rate rent in Plan II projects or 125 percent of rent in Plan I projects for the period of absence exceeding 60 consecutive days.

(1) If the tenant continues to be absent from the unit, the borrower must notify the tenant by certified mail at least 30 days prior to the end of the leasing period, to occupy the living unit by the end of the lease period or the borrower will start eviction proceedings.

(2) In those cases where the tenant's lease does not contain the lease clause in paragraph VIII.B.3c. of this Exhibit, the tenant will be advised that the lease will not be renewed, unless replaced with a lease meeting current requirements.

2. *Occupancy Policy.* Occupancy policy in FmHA financed projects shall have the objective of effective utilization of space without overcrowding or providing more space than is needed by the number of people in the household. An unborn child will be considered a household member for the purpose of determining household size.

a. The owner has the responsibility of establishing the occupancy standards used in an MFH project. The occupancy standards will be described in the project management plan.

b. The following occupancy guidelines are to be considered as the suggested number of persons per unit to assure efficient use of the rental units developed with FmHA financing and apply to all RRH projects, to determine the initial occupancy of RCH members, and to LH rental projects designed and operated for year-round occupancy:

No. bedrooms	Occupant density	
	Min.	Ideal
0	1	2
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10

c. The above occupancy guidelines may serve also as general guidelines for migrant and on-farm LH. Projects developed in compliance with local and/or state design requirements will determine the appropriate occupancy standards for migrant LH.

d. To achieve the occupancy policy objective:

(1) Project occupancy standards must be established but should permit some defined flexibility from any numerical standard when additional person(s) such as a newborn child will not overcrowd a unit or when allowing fewer person(s) than the standard will avoid vacancy and economic stress to the project.

(2) Such flexible occupancy standards for a tenant will continue until the borrower determines overcrowding or until the tenant household can move to an appropriate size unit within the project at such time as an eligible applicant is placed on the waiting list for the size unit presently occupied.

(3) Any allowed flexibility to the project occupancy standards and conditions associated therewith must be added in the tenant's lease agreement by an addendum.

(4) If there are no units of appropriate size available in the project, the tenant may be admitted and/or remain, except if a presently occupied unit has become overcrowded, the tenant will have to vacate the project.

e. Management may permit temporary occupancy of specially designed physical "handicap" units by households not needing such special design features, under the following conditions:

(1) No household needing the special design features of a "handicap" unit, is available to occupy the unit and management has made a diligent effort to reach tenants who qualify for the specially designed unit;

(2) The tenant agrees to transfer to an appropriate unit if and when it becomes available in the project;

(3) The responsibility to pay all costs associated with the subsequent move to the appropriate unit shall be mutually determined between the owner and the tenant.

(4) The appropriate lease clause in paragraph VIII.C. of this exhibit is incorporated in the tenant's lease.

f. Borrowers with RRH projects specifically built and designated for the elderly prior to October 27, 1980, with only a few or no one-bedroom units, may permit occupancy of two-bedroom units by single eligible tenants if this provision is included in the project occupancy policy. The occupancy policy should reflect the needs of the local market area. This eligibility determination made by management must be included in the tenant's lease and will entitle such tenant to all benefits without need for further FmHA approval.

g. When a unit cannot be rented under the provisions in paragraphs e. and f. above, the District Director may authorize an exception according to paragraph VI.B.6. of this exhibit.

h. A tenant who was determined eligible and allowed to occupy under regulations in effect prior to October 1, 1986, who does not meet eligibility requirements regarding income or occupancy policy as prescribed in these regulations may be permitted continued occupancy in the same unit for the duration of their residency. This provision specifically refers to:

(1) Elderly tenants of any income level who occupied their unit before October 27, 1980.

(2) Tenants who were determined eligible before October 27, 1980, but did not meet income and occupancy requirements on that date. Examples are:

(a) Individual tenants occupying a unit with separate tenant certifications whose combined income on October 27, 1980, would disqualify joint tenancy.

(b) Tenant households whose composition did not meet the occupancy guideline in paragraph VI.B.2.b. of this exhibit.

(3) Tenants who became income ineligible due to changes of income and shelter cost determination on October 1, 1986. This provision does not apply to normal increase of household income which would have made them ineligible before October 1, 1986.

i. For each RRH project specifically designated for the elderly, the borrower or management may not prohibit, prevent, restrict or discriminate against any tenant for continued occupancy or applicant for occupancy who owns or will keep a pet in their apartment unit unless the approved project pet rules are violated.

j. Nothing in this subpart requires that an apartment unit be made available to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

k. A household which includes a handicapped person may make reasonable modification(s) at their own expense to an existing apartment occupied or to be occupied by such person. The owner may condition permission for a modification on the tenant providing a reasonable description of the proposed modification(s) as well as reasonable assurance that the work will be done in a skillful manner and that any required building permits will be obtained. It is unlawful for an owner or its agent to refuse to permit such modifications that afford a handicapped person full enjoyment of the apartment. The owner or agent may, however, require the restoration of the apartment to its original condition, reasonable wear and tear excepted, at the tenant's expense when the tenant later vacates the apartment unit. Policy must be consistent for all handicapped tenants requesting to make modifications.

3. *Other Items the Rental Agent Should Consider in Determining Eligibility of Applicants for Admission to the Project. Please Note that any Criteria or Documentation must be Applied Uniformly for all Applicants for Occupancy.*

a. Verification of income and/or employment according to paragraph VII. of this exhibit. (Mandatory in all cases.)

b. Credit reports to reflect the applicant's past record of meeting obligations. (optional)

c. Prior landlord references to determine if the tenant was responsive to meeting rent payment obligations, care, and maintenance of the unit. (optional)

d. The applicant's financial capability to meet other basic living expenses and the rental charge, taking into consideration any subsidy assistance that could be made available to the tenant. Where RA is not available, any very-low or low-income household that would be required but unable to pay the approved rent, including utilities, may be eligible for some form of rent subsidy described in paragraph IV. of this subpart if it is available in the area. (optional)

e. Written verification of an unborn child by a doctor or other qualified third party. (when applicable)

4. *Surviving or Remaining Members of Eligible Tenant Household.*

(a) Surviving members of an elderly, disabled and/or handicapped tenant's household may continue occupancy of the unit even though they may not meet the definition of an elderly, disabled or handicapped person stated in paragraph II. of this exhibit, provided:

(1) They are eligible occupants with respect to income and were either co-tenant or member of the household and have legal capacity to sign and assume the lease.

(2) They occupied the unit at the time that the original tenant ceased to occupy the unit, and

(3) A surviving nonelderly spouse shall not qualify for the elderly family adjustments to income.

(4) The District Director determines on a yearly review basis that their continued occupancy will not be detrimental to the integrity of the project in the community.

(b) Surviving members of a domestic farm laborer household may continue to occupy when they meet the definition of a domestic farm laborer as defined in paragraph II. of this exhibit.

(c) A remaining household member(s), who is included on the current tenant certification may continue to occupy the rental unit if they otherwise independently meet tenant eligibility requirements and sign a succeeding tenant certification establishing their own tenancy.

(d) When tenants under 4 a., b., or c. of this paragraph no longer meet the requirements of 4 a., b. or c., the provisions for formerly eligible tenants in paragraph VI.B.5 of this exhibit will apply.

5. *Formerly Eligible Tenants.* Unless authorized by paragraph VI.B.2g., formerly eligible tenants will be required to vacate their unit within 30 days (7 days for migrant farm labor tenants with week-to-week lease agreements) or the end of the term of their lease agreement, whichever is longer, when an eligible applicant is on the waiting list and is available for occupancy. If vacating the unit in the time period described creates an undue hardship on the family, the District Director may permit continued occupancy for a reasonable period of time. The following "formerly eligible" situations apply to this paragraph:

a. Tenants who no longer meet FmHA income eligibility requirements. (This includes tenants receiving RA or Section 8 assistance.)

b. Tenants in LH projects who no longer meet the farm labor occupation requirement, except retired or disabled domestic farm laborers who are eligible tenants at the time of their retirement or becoming disabled may continue to occupy a project that they initially occupied as an eligible domestic farm laborer.

c. Tenants who no longer meet the occupancy policy for the project. These tenants must either move to a unit of appropriate size in the project, or when none is available, vacate the project at the termination of their lease. However, the tenant may remain as an ineligible tenant if there are no other applicants on the waiting list for the size of unit presently occupied.

6. *District Director Authority to Permit an RRH or LH Borrower to Rent to Ineligible Tenants.*

a. The District Director may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move for any reasons of ineligibility. A copy of the authorization to rent to ineligibles will be forwarded to the State Office. The following determinations must be made by the authorizing FmHA official.

(1) There are no eligible persons on a waiting list.

(2) The borrower provided evidence that a diligent but unsuccessful effort to rent any vacant unit(s) to an eligible tenant household

has been made. Such evidence may consist of advertisements in appropriate publications, posting notices in several public places, and other places where persons seeking rental housing would likely make contact; holding open houses, making appropriate contacts with public housing agencies and authorities (where they exist), State and local agencies and organizations, Chamber of Commerce, and real estate agencies.

(3) The borrower will continue with aggressive efforts to locate eligible tenants and submit to the District Office, along with Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," a report of efforts made. The required followup should be posted in the District Office on Form FmHA 1905-6, "Management System Card-Multifamily Housing."

(4) To protect the security interest of the government the units may be rented for no more than a year after which the lease must convert to a monthly lease. The monthly lease must require that the unit be vacated when an eligible prospective tenant is available. The ineligible tenant will then be given 30 days to vacate.

(5) Tenants residing in RRH units who are ineligible, because their household income exceeds the maximum for the project, will be charged the FmHA approved note rate rental rate for the size of the unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate.

(6) Tenants who are ineligible for reasons other than income may benefit from RA and/or interest credit if they are otherwise eligible in the same manner as an eligible tenant.

(7) Tenants residing in off-farm LH units who are ineligible because their household income does not meet the requirements of Subpart D. of Part 1944 of this chapter for the area will be charged rents as set out in paragraph VI.B.6.a.(5). Such tenants will be charged the lesser of the required shelter cost contribution described under Tenant Contribution in paragraph II. of this exhibit or the prevailing rental rates for the area, as determined by the Agency, based on the best information available. Any income derived from such tenants which is in excess of that needed to meet annual LH project expenditures, FmHA LH loan payments, and any authorized reserve contribution must be used as set out in this section. Such income may be used to properly maintain the security property in accordance with an FmHA approved budget or remitted to the Agency for crediting to the Rural Housing Insurance Fund.

b. Examples of situations where the District Director may consider authorizing a borrower to rent units to ineligible persons when units cannot be rented to eligible persons are:

(1) Permitting occupancy by other eligible families in a project designed for, designated as, and limited to occupancy by eligible elderly, disabled, and/or handicapped persons.

(2) A household that does not meet eligibility requirements regarding income, i.e., an above moderate-income household.

c. When the District Director determines that a borrower may rent to an ineligible tenant, the written authorization must contain the appropriate clauses which must be inserted into the ineligible tenant's lease. At a minimum it should include:

(1) The reason for ineligibility.

(2) The term of ineligible occupancy.

(3) Any conditions under which the tenant will be required to vacate the unit including moving to an appropriate size until when warranted to comply with the established occupancy standards.

(4) The length of notice the tenant will be given to vacate.

C. *Maintenance of Inquiry and Waiting Lists.*

1. When a prospective tenant or member inquires (by telephone, letter or visit) concerning the availability of a rental or cooperative unit, the borrower or rental agent may place the prospect's name chronologically on an inquiry list. The list should contain enough information for future contact by mail or telephone. This List does not establish any priority. The list serves as a good resource document.

2. When a prospective tenant or member files an application for occupancy the borrower or rental agent will place the prospect's name chronologically on the appropriate written waiting list. Exhibit B-13 of this subpart contains a sample waiting list. An application is a written document(s) prescribed by the management providing sufficient information for the rental agent to complete the steps necessary to determine eligibility. The actual determination of eligibility will be conducted according to the application process described in paragraph VI D of this exhibit. Eligibility for cooperative membership will be determined in accordance with subpart E to part 1944 of this chapter.

3. Separate waiting lists by categories and/or a master waiting list with income levels identified (very low, low and moderate), and categories or priorities indicated will be maintained for rural rental and year-round occupancy farm labor housing. Each list must be maintained in chronological order. When there are separate lists, they must be cross-referenced for prospective tenants who fit more than one category or priority. Separate lists may be maintained for:

a. Income levels (very low, low, moderate, ineligible).

b. Various size units.

c. Units for elderly, disabled or handicapped persons, families, or any other combination as planned for the project according to the borrower's loan agreement or resolution.

d. Persons who require the special design features of the handicapped unit(s) in the project such as persons confined to a wheelchair or requiring other auxiliary apparatus for mobility and/or life support. Persons on this list have priority for these units.

e. Displaced persons due to housing rendered uninhabitable or seized by legal action and holders of FmHA issued letters of priority entitlement to whom priority consideration may be given.

f. In congregate housing projects, priority can be given to tenants who need services to remain independent in accordance with Exhibit J. of this subpart.

g. In projects with Section 8 units, priority for such units will go to applicants who, at their time of housing need, are involuntarily displaced, or living in substandard housing or paying more than 50 percent of income for rent.

4. For seasonal farm LH a waiting list should be chronologically compiled as in paragraphs VI.C.1, VI.C.2, and VI.C.3 of this exhibit. These lists should be maintained for the season in which the project will be operating. Prospective tenants should be advised that the waiting list will terminate on the closing date of the project in any given season.

a. Seasonal LH management plans should identify a date when applications will be accepted for a new operating season and a waiting list compiled.

b. A process should be specified in the plan for advising prospective tenants of the application process and the dates of project operation.

5. A Letter of Priority Entitlement (LOPE) issued by FmHA according to § 1965.90 of subpart B. of part 1965 of this chapter entitles prospective tenants to move to the top of any waiting list for that appropriate unit size for which the applicant qualifies.

6. Each list by category will be available for inspection by prospective tenants on the waiting list. When prospective tenants are first assigned to the waiting list, they will be notified of the category(s) to be assigned to their application.

7. Borrowers may establish a procedure for purging the inquiry and waiting list(s) periodically of prospective tenants who are no longer interested in occupancy. The borrower must inform each prospective tenant of this procedure and any actions they must take to maintain their priority position on the waiting list. When a name is removed from the waiting list, the prospective tenant must be informed in writing at their last known address. The letter must include appeal rights under Subpart L. of Part 1944 of this chapter.

D. *Notification of Eligibility or Rejection.*

1. *Application Status for Determining Eligibility.* All persons desiring to apply for occupancy will be provided the opportunity to submit a complete application. The borrower or rental agent will provide prospective tenants or members with a written list of all information required for a complete application and offer assistance in completing the application if needed.

a. After the potential tenant or member has submitted all required forms and information but additional information is required, the borrower or rental agent must notify the applicant within 10 days of the items needed to complete a review of eligibility. The application file will be documented on the action taken.

b. When an operational project has few or no vacancies, and there are sufficient active applications from households determined eligible to fill expected vacancies, the borrower may postpone verification of eligibility for new applicants.

c. While application fees are discouraged, any fee charged to prospective tenant must

be reasonable and limited to actual costs for obtaining necessary information.

2. *Application Requirements.* At a minimum to be considered complete, applications must include the following information for each prospective tenant household:

a. Name and present address.

b. Household income information, as defined under Annual Income in paragraph II of this exhibit, and verified and certified according to paragraph VII. of this exhibit.

c. Age and number of household members.

d. Handicap status, if applicable.

e. Signature and date section.

f. Race or ethnic group and sex designation. This designation shall be placed as the last section of the application form beneath the signature and date section.

(1) The borrower or management agent will request that each prospective tenant or member provide this information on a voluntary basis to enable monitoring or compliance with Federal laws prohibiting discrimination. When the applicant does not provide this information, the rental agent or board will complete this item based on personal observation or surname.

(2) The following disclosure notice shall appear on the tenant application form or on an amendment to the application:

"The information solicited on this application is requested by the apartment owner in order to assure the Federal Government, acting through its Farmers Home Administration, that Federal Laws prohibiting discrimination against tenant applicants on the basis of race, color, national origin, religion, sex, familial status, age, and handicap are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname."

g. The application form shall contain the fair housing logotype or slogan on the first page of the form.

3. *Notification to Applicant.* The applicant who has submitted a completed application will be notified in writing that he or she has been selected for immediate occupancy, placed on a waiting list, or rejected.

4. *Applicants Determined Ineligible.* Applicants determined ineligible will be notified in writing of the specific reasons for rejection.

a. The rejection letter must also outline the applicant's rights and be sent or hand-delivered according to the FmHA Tenant Grievance and Appeals Procedures in subpart L. of part 1944 of this chapter.

b. When the rejection is based on information from a Credit Bureau, the source of the Credit Bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

c. Applicants may be rejected due to:

(1) A history of unjustified and chronic nonpayment of rent and financial obligations.

(2) A history of violence and harassment of neighbors.

(3) A history of disturbing the quiet enjoyment of neighbors.

(4) A history of violations of the terms of previous rental agreements such as the destruction of a unit or failure to maintain a unit in a sanitary condition.

d. Rejection of applicants on an arbitrary basis is prohibited. Examples of such arbitrary rejections includes considering the following factors in determining a tenant's eligibility:

(1) Race, color, religion, sex, age, familial status, national origin, physical or mental handicap (except in those projects or portions of projects designated for elderly, disabled and/or handicapped, where occupancy by non-elderly, nondisabled or nonhandicapped can be prohibited).

(2) Receipt of income from public assistance.

(3) Families with children of undetermined parentage.

(4) Participation in tenant organizations.

(5) Tenants or tenant family members with AIDs.

e. In the case of LH projects, no organization borrower other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

f. Rejected applications must be kept on file by the borrower or management agent until a compliance review has been conducted by FmHA in accordance with subpart E of part 1901 of this chapter.

E. *Tax Credit Compliance.* The Tax Reform Act of 1986 permits certain RRH borrowers to receive tax credits for low-income housing projects if: (1) 20 percent or more of the units are occupied by very low-income tenants whose annual gross income is 50 percent or less of the area median gross income, or (2) 40 percent or more of the units are occupied by tenants whose annual adjusted income is 60 percent or less of the area median gross income.

1. Eligible borrowers with projects qualified to receive tax credits will follow the tenant selection criteria of paragraph VI F of this exhibit except that tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow borrowers to meet their tax credit requirements.

2. The borrower may be required to rent to other eligible applicants when the District Director (DD) determines that vacancies of at least six months duration exist, and that such vacancies threaten the financial viability of the project to the extent that current income, plus any remaining initial operating capital, and any funds from other borrower sources are no longer adequate to pay operating and maintenance costs, pay debt service and fund the reserve account as scheduled. This determination must be made in the form of a written notification to the borrower. The borrower must be advised of their appeal rights on units designated for tax credits as specified in Subpart B of Part 1900 of this chapter. (Example: For 38 units of a 48-unit project designated for tax credits, the appeal applies when the borrower is required by the District Director to rent one or more of these 38 units to other eligible applicants.)

3. Borrowers requesting Internal Revenue Service (IRS) tax credits in an existing project must honor the remaining period of a tenant's lease and, unless material noncompliance or other good cause to terminate occupancy as described in paragraph XIV A of this exhibit exists, renew the tenant's lease or establish other mutually acceptable housing arrangements.

F. *Tenant and Member Selection.*

1. An eligible applicant will be selected from a waiting list(s) identifying the category on basis of the applicant's unit size needed, income level (Very low, Low, Moderate, Ineligible) or from a priority waiting list when the available size unit meets the applicant's need. The eligible applicant will further be selected on a first come first served basis from the selected category or priority waiting list in the following order:

a. Very low-income

b. Low-income

c. Low-income, up to 60% of median income, in "tax credit" projects

d. Moderate-income

e. Ineligible

2. When RA is available:

a. Very low-income applicants eligible for RA have a priority over all other applicants on each type of waiting list maintained by the borrower in accordance with paragraph XI of Exhibit E to this subpart.

b. Low-income applicants may be selected provided no very low-income applicants remain on the waiting list.

c. Moderate-income applicants may not be selected for occupancy when the number of unassigned RA units equals or exceeds the number of vacant units. (Borrowers unable to use RA may consider requesting a transfer of RA authority according to paragraph XV of Exhibit E.)

3. When Section 8 is available, the following applicants will have priority over other applicants if at the time of housing needs, they are:

a. Involuntarily displaced, or

b. Living in substandard housing, or

c. Paying more than 50 percent of income for rent.

4. Selections are to be made from the waiting list or category maintained for the particular unit size and/or unit type in which a vacancy exists. If the applicant cannot accept the unit at that time, the reason for not accepting the living unit will be documented. The applicant's name will then be removed from the waiting list unless the rental agent determines that hardship exists for reasons such as health problems or high cost of rent without RA in which case the applicant's name will remain on the list in chronological order. An applicant whose name has been removed from the waiting list may reapply.

5. When there are no applicant names on the waiting list for the size and/or type of vacant living unit, a name may be selected from the waiting list of another size and/or type of living unit according to the date order of the application on the master waiting list. The selected tenant will be subject to the provisions of paragraph VI.B.2.d. of this

exhibit or for ineligible tenants found in paragraph VI.B.6. of this exhibit.

6. In LH projects, items 1 and 2 of this paragraph do not apply. Eligible labor housing applicants will be selected according to items 4 and 5 of this paragraph and the priority stated in § 1944.153 (bb)(2) of this chapter irrespective of the availability of RA.

G. *Tenant or Member Record File.* A separate file must be maintained for each tenant or member. This file will include items such as application, tenant certification with attached income and adjustment(s) verification forms and calculations, lease or occupancy agreement and attachments, inspection reports for moving in and moving out, correspondence and notices to the tenant or member, and any other necessary information. The income verification, tenant and member eligibility certification and recertification information must be retained for at least 3 years while the tenant or member is living in the unit and for 3 years after the tenant or member has moved out.

H. *Marketing Incentives:* Borrowers may use special incentives to attract tenants to occupancy in a project. This will be done in conjunction with a servicing plan developed according to Exhibit F of subpart B of part 1965 of this chapter. Marketing incentives may be used when normal marketing effort and techniques by project management fail to fill long-term vacant units during initial rent-up or during operation of an existing multiple housing project. Only one incentive should be used with each applicant for tenancy. Any special marketing activities undertaken will take into consideration the provisions of the AFHM Plan and will be available to all individuals regardless of race, color, national origin, sex, religion, age, familial status, or handicap.

1. *Types of marketing incentives.*

a. Temporary rent discount.

(1) Rent discount for 1 or more months; generally not to exceed 6 months.

(2) One month rent free. This form of rent discount should be used with discretion such as prorated over several months or used in the last month of occupancy or lease term.

b. Permanent discounted security deposit. This may range from a partial discount to a waiver of the security deposit.

c. Merchandise that will benefit the tenant's lifestyle in their unit such as a microwave oven, telephone, television, cooking ware or small furniture.

d. A fee for locating a person or family who becomes a tenant.

2. *Conditions to permit marketing incentives.* Borrowers may use a marketing incentive when the following conditions exist or are met:

a. The vacancy rate is at least 15% for 4 months of the most recent 6 month period.

b. Use of the incentive will preserve and likely restore economic viability to the project.

c. The incentive is given when the applicant moves into the unit.

d. The tenant's lease will contain a clause or addendum that describes the duration and amount of any cash rent reduction. Or any permanent reduction of security deposit.

3. *Funding the marketing incentives.* The incentives may be funded by the project and by the borrower.

a. Project funding.

(1) Project funds may be used to the extent that the borrower's scheduled return on investment (ROI) is used in lieu of paying the ROI for the budget year.

(2) Project reserve funds may be used during the budget year to the extent one year's reserve requirement remains on deposit at the end of the budget year.

b. Borrower funding.

(1) The borrower may use its own (non-project) funds after the funding described in a.(1) and a.(2) is used or in lieu thereof.

(2) Any borrower advances for this purpose may not be repaid from project funds unless authorized by the District Director in writing before the funds were advanced.

4. *Documenting the marketing incentives.* The borrower is responsible for documenting the type of incentives provided and the names of the tenants who receive any incentive items.

5. *Annual review.* The conditions and requirements for marketing incentives shall be reviewed at least annually by the borrower to establish the need to continue or discontinue the incentives. This review may be accomplished sooner but normally will be made in conjunction with the annual budget preparation and approval process described in this exhibit and the provisions of Exhibit F of subpart B of part 1965 of this chapter.

VII. *Verification and Certification of Tenant or Member Income and/or Employment:* The incomes reported by the tenants or members (and employment in the case of LH tenants in LH rental projects but not in LH situations not paying rent nor receiving RA) selected for occupancy must be verified by the borrower or rental agent before the person is determined eligible. Upon obtaining the tenant's authorization to verify the tenant's income and/or employment, the borrower shall perfect the verification of income/employment with the source of income/employment without further involvement by the tenant. The information for the determination of eligibility is valid for not more than 90 days before the effective date of the tenant certification.

A. *Verification of Income from Employment.* Verification of income from employment, authorized by the tenant or member/applicant, must be obtained from the employer in writing and filed in the "Tenant or Member Record File." Form FmHA 1910-5, "Request for verification of Employment" will be used for this purpose. (A reproducable copy of Form FmHA 1910-5 is available at any FmHA office.)

B. *Verification of Income from Other Sources.* Any income from other than employment (e.g., social security, Veterans Administration, public assistance) must be verified in writing by the income source. Verification of income must be documented and filed in the "Tenant or Member Record File." When it is not immediately possible to obtain the written verification from the income source, the income may be temporarily verified by actually examining the income checks, check stubs, or other reliable data the person possesses which indicates gross income.

C. *Verification of Income and/or Employment for LH Tenants.*

1. For housing rented to farm laborers and owned by public bodies and public or private nonprofit organizations, and other owners (farmer, family farm partnership, family farm corporation, or an association of farmers):

a. Verification of income is required for those domestic farm laborers in LH rental housing, including migrants, who will receive the benefits of RA. When the tenants do not have easily verifiable income, the borrower may project monthly income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance.

b. Verification that LH tenants in LH rental housing have sufficient income from farm labor employment, that meets the definition of domestic farm labor, is required for such domestic farm laborers, including migrants. Employment verification is an addition to income verification for those tenants described in paragraph VII C 1 a. Verification must be documented and filed in the "Tenant Record File" or in the borrower loan docket.

2. For housing operated on a nonrental basis and owned by a farmer, family farm partnership, family farm corporation, or an association of farmers, income and employment verification is not required.

3. For housing owned and operated as described in paragraph VII. C. 1 and 2 of this paragraph, and rented to noneligible tenants as a servicing action, income must be verified and rent collected according to the requirements of this subpart and subpart D of part 1944 of this chapter.

D. *Random Sample of Tenant or Member Income and/or Employment Verification.* District Directors are required to make a random sample of tenant or member income verifications and adjustments to income; in the case of LH tenants, employment verifications for use in evaluating the adequacy of such verifications. The random sample can be derived from information on the certification forms that will be submitted to the District Office in accordance with paragraph VII F of this exhibit. The random sample should be representative of very low-, low- and moderate-income persons in the project, including those receiving subsidy assistance, those paying in excess of the level cited in paragraph IV. A. 2. c. (1), (2) or (3) of this exhibit for the costs of rent or occupancy charge and utilities, and those paying the note rate rent. The District Director will conduct the random sample in the borrower's office during supervisory visits (and document the selection method) or at any time he/she may be knowledgeable of discrepancies in income and/or employment verifications. If the random sample discloses discrepancies, the District Director will be required to investigate further and report to the State Director to obtain the assistance of the USDA Office of Audit or the Office of Investigations.

E. *Use of HUD Certification Form for Section 8 Certificate or Housing Voucher Recipients.* HUD Form 50059, or another HUD form approved by HUD for this purpose, may be used in lieu of Form FmHA 1944-8 for the tenants receiving Section 8 certificate or housing voucher assistance. However, the tenant's income cannot exceed FmHA limits

for the type of housing project involved if it has been calculated according to the formula contained in Form FmHA 1944-8.

F. *Certification of Tenant or Member Income.*

1. To be current, the tenant or member certification Form FmHA 1944-8 (or for Section 8, the appropriate HUD form) must be submitted in such manner that it is received in the FmHA District Office by the close of business (COB) of the due date as follows:

a. *Recertifications* are due on or before the effective date (the first day of the month following expiration of the current certification; certifications expire on the last day of a month, 12 months from the effective date).

b. *For new tenant or member move-in from 2nd through 23rd* of a month, the certification is due on or before the first day of the next month.

c. *For new tenant or member move-in from 24th through 1st* of next month, the certification is due on or before the tenth of the month in which it is effective. (Example: Move-in is June 24th, effective date is July 1st and District Office must receive the certification by COB July 10th).

d. When the due date determined by a, b, or c above falls on a non-working day, a certification received by COB of the next work day will be considered received on time and overage will not be charged.

2. When the District Office does not have a certification in the office as required in 1 above, the tenant or member is ineligible for RA and interest credit for that month and overage for the month will be charged to the project account.

a. If a formal eviction process has started, the provisions of paragraph VII. F. 6. d. of this exhibit will be followed.

b. If the late certification was due to non-cooperation by the tenant or member, the borrower may charge the person note rate rent for the month, hence overage is charged to the person. If the error was due to the borrower's or management's action, the cost of overage will be a project expense and it will not be charged to the person.

c. Excessive overage charges due to negligent management may not be considered cause for a rent increase. The costs should be deducted from return to owner and may be cause for requiring different management.

3. Any change, plus or minus, in gross income or adjustment to income of $20.00 to $29.99 per month may be reported at the OPTION of the tenant or member; and when reported, a new certification Form FmHA 1944-8 will be promptly completed and filed with FmHA. Any change, plus or minus, of $30.00 or more per month in gross income or adjustment to income, or a change in family size MUST be reported and requires a new certification Form FmHA 1944-8 to be promptly completed and filed with the FmHA. The change will take effect the first of the month following preparation of the new certification.

4. The current certification form will be revised by correcting entries and initiating by the tenant or member and the owner's representatives when there are project changes such as:

a. Changed rental or occupancy rates and/or utility allowances.

b. Tenant or member relocation within the project.

c. Addition or removal of household RA.

5. Form FmHA 1944-8 must be processed as follows:

a. Borrowers or their representatives may sign Form FmHA 1944-8 up to 60 days prior to the effective date.

b. Borrowers or their representatives should submit Form FmHA 1944-8 to the FmHA District Office during the 30 day period preceding the effective date. Borrowers should not delay submitting certifications until form FmHA 1944-29 is submitted. Borrowers should avoid submitting certifications just before or on the first day of a month to reduce impact on first of month account servicing at the District Office.

c. The FmHA District Office reviews each Form FmHA 1944-8 submitted and verifies that the information is complete and correctly computed based on the information provided on the form (see Guide Letter 1930-1 for use in noting exceptions).

d. The FmHA approved tenant certifications and recertifications have an effective period of 12 months. The effective period begins on the effective date which is always the first day of the month.

6. Each tenant or member must be recertified within 12 months of the previous certification. Tenants receiving Section 8 assistance will be certified according to HUD regulations.

a. It is the tenant's or member's responsibility to provide income information and sign the certification form as a condition for continued occupancy. Failure to do so will cause a charge for overage/surcharge during those months such information was not provided, and it may result in termination of occupancy.

b. The borrower's responsibility is to:

(1) Notify the tenant or member that a current certification and income verification is required before the due date and explain the procedure necessary to accomplish recertification. Normally, this initial written notice will be sent 75 to 90 days prior to the expiration date of the current certification; then

(2) Obtain verification of income from tenant or member records and/or directly from tenant or member employers and process the appropriate tenant recertification; and

(3) Submit the signed recertification to be received by the District Office *by the due date* stipulated in paragraph VII. F. 1.

c. The borrower must provide a second written notice to the tenant or member 30 days prior to the due date if they have not responded. The second notice must advise the tenant or member that without a current certification, the person will be required to pay note rate rent or occupancy charge (i.e. the person pays overage) and that termination proceedings may be started as of the due date since an annual recertification is required for continued occupancy.

Note: In any event, the borrower is required to pay the overage amount to FmHA according to § 1951.506(a)(5)(iii) of subpart K to part 1951 of this chapter (available in any FmHA office).

If the tenant or member has RA, the person must be advised that without a current certification, the person's RA will be canceled and possibly may not be immediately available for reinstatement should a proper certification be provided at a later date.

d. When a notice of termination has been served on a tenant or member for failure to recertify, the borrower must provide a copy of the termination notice to the District Office as required in paragraph XIV B of this exhibit. If the District Director does not receive a new certification on such person(s), the District Director will annotate the project master list with an E beside the "Expiration Date of Tenant Certification" on Form FmHA 1944-29 for the appropriate tenant(s) or member(s). The District Director will continue to authorize interest credit and waiver of overage while the termination is being actively pursued until resolution of the termination. The payment of RA will be suspended during the termination process. Upon conclusion of the termination process the RA will either be reinstated or given to another tenant or member.

7. The borrower must submit Form FmHA 1944-29 to the District Office with each payment, report of overage or request for RA as required in paragraph XIII.C.1.b. of this Exhibit. The calculations on Part II of the form must be for tenants or members in residence on the first day of the month preceding the payment due date. All calculations will be made as if the tenant or member was in residence for the full month. ADJUSTMENTS WILL NOT BE MADE TO THE BORROWER'S SUBSIDY, RA REQUEST, PAYMENT OR OVERAGE CHARGES FOR PERSONS MOVING IN OR OUT AFTER THE FIRST OF THE MONTH. (See Guide Letter 1930-1 for any necessary District Director's response after review of Form FmHA 1944-29).

8. Paragraph VIII.B.3.b. of this exhibit is a required lease or occupancy agreement provision requiring tenants or members to notify the management of any permanent change in adjusted monthly income or size of household. Upon receipt of such notice, the borrower must promptly obtain a new certification form and income verification and submit it to the District Office.

9. When a borrower/agent believes that an applicant/tenant or member certification or income verification is inaccurate, they may provide the information including the tenant's or member's social security number to the District Office requesting a further verification through the appropriate state employment agency. The District Office will forward the request to the State Director for submission to the State Agency that keeps records on the incomes of wage earners. The State Director will develop a method of obtaining the information from the State Agency. Any reasonable cost for information provided by a State shall be a project expense.

10. The following *emergency* certification/recertification procedure may be allowed by exception, but it must otherwise meet the submission to FmHA requirements stated in paragraph F 1:

a. When a tenant or member applicant needs to initially occupy before income verification is complete, or when a borrower has been unable to initiate recertification on time, an "estimated" verification may be performed and the certification and the lease or occupancy agreement completed and marked "subject to verification of income." Temporary verification may also be obtained through contacts with individuals who may be knowledgeable to the person's income. When no other verifiable source is available, a notorized affidavit from the tenant or member attesting to his/her gross annual income may be accepted. After normal verification is completed, any needed adjustment in tenant or member contribution can be made and recorded on the certification and when appropriate, the lease or occupancy agreement.

b. When a tenant or member decides to continue occupancy after giving indication or vacating the project and insufficient time remains to complete the verification of income or when an employer fails to return a verification of income on time, the procedure of 10a of this paragraph may be followed.

G. *Mid-month Tenant or Member Certification.* The certification effective date for a tenant or member starting occupancy on a day other than the first day of the month shall be the first day of the following month. Certification shall be completed according to paragraph F.

VIII. *Lease agreements and occupancy agreements:* A Lease Agreement is a written contract between a tenant and landlord assuring the tenant quiet, peaceful enjoyment and exclusive possession of a specific dwelling unit in return for payment of rent and reasonable use and protection of the property. The contract between a cooperative member and the cooperative is called an Occupancy Agreement.

A. *Form of Lease or Occupancy Agreement.* Each State Director is encouraged to prepare a sample lease form complying with individual State laws and FmHA requirements. Occupancy agreements for cooperatives are to be prepared in accordance with applicable State laws and subpart E to part 1944 of this chapter. The State Director may incorporate clauses which meet a specific need in compliance with State law. Any sample lease must be reviewed and approved by the OGC before being provided to borrowers as a guide for preparing an acceptable project lease.

1. All leases will be in writing. Leases for units for which tenants are eligible must cover a period of one year. If the tenant is not subject to termination of occupancy according to paragraph XIV.A. of this exhibit, a renewal lease, or an addendum of lease extension, shall cover a period of one year. Leases for LH may be for shorter periods where occupancy is typically seasonal. Leases for all tenants signed *after* notification of intent to prepay, but prior to prepayment, may be for a term which ends on the date of prepayment. Leases for tenants who entered a project with a Letter of Priority Entitlement and who are temporarily occupying a unit for which they are not occupancy eligible, will have the clause in paragraph VIII.C.1. inserted to deal with their obligation to move when an eligible unit becomes available.

2. Leases and occupancy agreements should contain an appropriate escalation clause permitting changes in basic and/or note rate rents or occupancy charges prior to the expiration of the document. Such changes would normally be necessary due to changing utility and other operating costs. Any changes must be approved by FmHA according to Exhibit C of this subpart. Leases must specify that no increases in tenant contribution to rent will take place due to prepayment of the FmHA loan during the term of the lease.

3. Projects in which occupancy surcharge collection is required by law should contain an appropriate clause permitting possible $2 annual increases in rent, effective on the project surcharge anniversary date. These increases will be based on the tenants income and can be charged prior to the expiration of the lease.

4. Pursuant to the Fair Housing Amendments Act of 1988, no provision may be incorporated into a lease that would prohibit:

a. Occupancy by families with children under 18 years of age, except such prohibition may be included in the lease used in housing designated at its inception for use by the elderly.

b. Occupancy by a person with a handicap who is willing and able to make reasonable modifications to an apartment unit, at the tenant's expense, to afford such person full enjoyment of the apartment. The owner may include in the lease, where reasonable, permission to occupy the apartment on the condition the tenant agrees to restore the interior of the apartment to the condition that existed before any modifications, reasonable wear and tear excepted.

5. In areas where there is a concentration of non-English speaking individuals, leases or occupancy agreements and the established rules and regulations for the project written in both plain English and the appropriate non-English language must be available to the tenants or members. The tenant or member should have the opportunity to examine and execute either form of lease or occupancy agreement.

6. The form of lease or occupancy agreement to be used by the borrower and any modifications of the same must be approved by the FmHA District Director. When submitting a lease or occupancy agreement form for FmHA approval, it must be accompanied by a letter from the borrower's attorney regarding its legal sufficiency and compliance with State law and FmHA regulations.

7. A copy of a properly completed and approved Exhibit A–6, "Housing Allowances for Utilities and Other Public Services," of subpart E of part 1944 (when the tenant or member will pay utilities) and a copy of the established rules and regulations for the project will be provided to the tenant or member as attachments to the lease or occupancy agreement.

8. A copy of a properly completed and signed Form FmHA 1944–8 or HUD Form 50059 or other HUD approved form for those tenants receiving HUD Section 8 tenant subsidy, will be used to calculate each tenant's contribution and will be provided to the tenant as an attachment to the lease.

B. Required Lease or Occupancy Agreement Clauses. The following clauses will be required in leases used in connection with FmHA-financed housing projects. Only clauses in paragraphs 1, 3b, 3d, 3e, 4, and 5 are applicable to cooperative occupancy agreements.

1. All lease and occupancy agreements must include a statement indicating that the project is financed by the FmHA and is subject to nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Fair Housing Act, sec 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975; and that all complaints are to be directed to the Secretary of Agriculture or to the Office of Equal Opportunity, USDA.

2. All lease agreements must also specify that should the tenant no longer meet the eligibility requirements of the project during the term of the lease agreement, he/she will be required to vacate the unit at the end of the lease term unless eligibility can be established following specified steps or an exception is granted by management.

3. All leases used in FmHA-financed RRH projects must include the following clauses except for elderly, disabled, and handicapped persons in a full profit plan project unless otherwise noted: (Occupancy agreements must include the clauses contained in paragraphs b, d, and e.)

a. "I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined periodically by the Farmers Home Administration for the (State/Territory)."

b. "I agree I must immediately notify the lessor or cooperative when there is a change in my gross income or adjustment to income of $30.00 or more per month, or there is a change in the number of persons living in the household. I understand I have the option to notify the lessor or cooperative of a change, plus or minus, of $20.00 to $29.99 per month in my gross income or adjustment to income."

c. "I understand that I must promptly notify the lessor of any extended absence and that if I do not personally reside in the unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, my net monthly tenant contribution shall be raised to ____/ per month (note rate rent for Plan II projects or 125 percent of rent in Plan I projects) for the period of my absence exceeding 60 consecutive days. I also understand that should any rental assistance be suspended or reassigned to other eligible tenants, I am not assured that it will still be available to me upon my return. I also understand that if my absence continues, that as landlord you may take the appropriate steps to terminate my tenancy."

d. "I understand that should I receive occupancy benefits to which I am not entitled due to my/our failure to provide information or due to incorrect information provided by me or on my behalf by others, or for any other household member, I may be required to make restitution and I agree to repay any amount of benefits to which I was not entitled."

e. "I understand that income certification is a requirement of occupancy and I agree to promptly provide any certifications and income verifications required by the owner or cooperative board to permit determination of eligibility and, when applicable, the monthly tenant or member contribution to be charged."

4. Leases used by borrowers participating in the FmHA RA program will contain the following clauses. (These clauses can be made an addendum to the lease and they must be signed by the lessor and lessee):

"I understand and agree that as long as I receive rental assistance, my gross monthly contribution (as determined on the latest Form FmHA 1944-8, which must be attached to this lease) for rent or occupancy charge and utilities will be $____. If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $____ will be deducted from my gross monthly contribution and my resulting net monthly contribution be $____. If my monthly contribution would be less then zero, the lessor will pay me $____.

I also understand and agree that my monthly contribution under this lease or occupancy agreement may be raised or lowered, based on changes in the household income or adjustments to income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this contract. Should I no longer receive rental assistance as a result of these changes, or the rental assistance agreement executed by the owner or cooperative and FmHA expires, I understand and agree that my monthly contribution may be adjusted to no less than $____ (Basic) nor more than $____ (Note Rate) during the remaining term of this lease or occupancy agreement, except that based on the escalation clause in this contract these rates may be changed by a Farmers Home Administration approved rent or occupancy charge change.

[Note No. 1: Eligible borrowers with LH loans and grants, Plan I direct RRH or insured RRH loans approved before August 1, 1968, may omit the words "no less than $____ (Basic) nor more than" from the last sentence of the above statement.]

"I understand that every effort will be made to provide rental assistance so long as I remain eligible and the rental assistance agreement between the owner or cooperative and FmHA remains in effect. However, should this assistance be terminated I may arrange to terminate this contract, giving proper notice as set forth elsewhere in this lease or occupancy agreement."

[Note No. 2: The following additional clause is needed by those borrowers with Plan I direct or insured RRH loans approved before August 1, 1968.]

"I further agree that should I be permitted to occupy when my income exceeds maximum limits, I shall pay a 25 percent rental rate surcharge in additional to my rental rate of $____."

5. For leases with tenants occupying units in which borrowers are operating under Plan I either with or without interest credit approved on or after August 1, 1968:

"I understand and agree that my rent rate of $ ____ (includes) (excludes) my cost of utilities. I further understand and agree that should I be permitted to occupy when my income exceeds maximum limits, I shall pay 25 percent rental rate surcharge in addition to my rental rate."

6. For leases or occupancy agreements in projects which borrowers are operating under Plan II Interest Credit Only:

"I understand and agree that my gross monthly contribution as determined on the latest Form FmHA 1944-8, which must be attached to this contract, for rent or occupancy charge and utilities will be $____.

If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $____ will be deducted from my gross monthly contribution except that I will pay not less than the basic rent nor more than the note rate rent or occupancy charge stated below. My net monthly tenant contribution will be $____. I understand that should I receive rental subsidy benefits (interest credit) to which I am not entitled, I may be required to make restitution and I agree to pay any amount of benefit to which I was not entitled. I also understand and agree that my monthly tenant contribution under this lease or occupancy agreement may be raised or lowered based on changes in the household income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this contract. My contribution will not, however, be less than $____ (Basic) nor more than $____ (Note Rate) during the term of this contract, except that based on the escalation clause in this lease or occupancy agreement, these rental rates or occupancy charges may be changed by a Farmers Home Administration approved rent or occupancy charge change."

7. Leases used by borrowers with LH loans and/or grants will use the following additional clauses:

a. "I understand that the project is operated and maintained for the purpose of providing housing for domestic farm laborers and their immediate families. I do hereby certify that a substantial portion of my immediate family income is and will be derived from farm labor. I further understand that domestic farm labor means persons who receive a substantial portion of their income as laborers on farms in the United States and either (1) are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands, after being legally admitted for permanent residence therein, and may include the immediate families of such persons. Laborers on farms may include laborers engaged in handling agricultural commodities while in the unprocessed stage. It also includes labor for the production of aquatic organisms under a controlled or selected environment."

b. "I urge that if my household income ceases to be substantially from farm labor for reasons other than disability or retirement, I will vacate my dwelling after proper notification by the owner."

8. All leases, including all renewal leases, shall contain the following clause:

"I hereby understand that the use or the possession of an illegal controlled substance in or on any part of this apartment complex or cooperative is an illegal act. I further understand it is a material lease violation should I or any household member or guest under my control use, possess, sell, distribute or have any other illegal involvement with a controlled substance; that such actions constitute a basis for termination of my tenancy."

c. Special Lease Clause. The following clause should be used in addition to the required clauses in the special situation where management temporarily assigns a nonhandicapped household to occupy a unit specially designed for handicapped households under the conditions of paragraph VI B 2 of this exhibit:

"I/we acknowledge that I/we am/are occupying a designated handicap unit. I/we acknowledge that priority for such units is given to those needing special physical design features. I/we acknowledge that I/we am/are permitted to occupy the unit until management issues a notice that priority applicant is on the waiting list and that I/we must move to another suitably sized vacant unit in the project. Upon receiving this notice. I/we agree to move at [my/our own] [shared (as agreed)] (project) expense within 20 calendar days to the suitably sized vacant unit, if one is available. I/we further understand my/our rental rate will change, when appropriate, to the rental rate for the unit I/we move to and this lease will be modified accordingly."

D. Other Lease Provisions. All leases or occupancy agreements must contain provisions covering:

1. Names of the parties to the contract and all individuals to reside in the unit and the identification of the unit.

2. The amount and due date of monthly contributions, including occupancy surcharge levied, if any.

3. Any penalty for late payment of monthly contributions according to paragraph IX. B. of this exhibit.

4. The utilities and quantities thereof and the services and equipment to be furnished to the tenant or member by the management or cooperative and the tenant's or member's responsibility to pay utility charges promptly when due.

5. The process by which contribution and eligibility for occupancy shall be determined and redetermined including:

a. The frequency of such contribution and eligibility determinations.

b. The information which the tenant or member shall supply to permit such determinations: usually, income verification; names and ages of household members; and, in congregate facilities, information that permit management to determine the tenant's or co-tenant's level of function and degree of competence in performing daily living activities.

c. The standards by which rents or occupancy charges, eligibility, and appropriate dwelling unit size shall be determined.

d. Tenant's household agreement to move to a unit of appropriate size if the household size changes. If occupancy surcharge is required, tenant agrees to pay higher

surcharge rate of unit vacated or newly occupied unit.

e. The circumstances under which a tenant or member may request a redetermination of tenant contribution.

f. The effect of misrepresentation by the tenant or member of the facts upon which contributions or eligibility determinations are based.

g. The time at which shelter cost changes, contribution changes, or notice or ineligibility shall become effective.

6. The limitation upon the tenant or member of the right to the use and occupancy of the dwellings. Limitations may not be discriminatory in nature.

7. The responsibilities of the tenant or member in the maintenance or the dwelling and the obligation for intentional or negligent failure to do so.

8. Agreement or management or cooperative to accept a tenant or member contribution without regard to any other charges owed by tenant or member to management or cooperative and to seek separate legal remedy for the collection of any other charges which may accrue to management from tenant(s) or member(s).

9. The responsibility of management to maintain the buildings and any common areas in a decent, safe, and sanitary condition in accordance with local housing codes and FmHA regulations, and its liabilities for failure to do so.

10. The responsibility of management or cooperative to provide the tenant or member with a written statement of the condition of the dwelling unit (when the tenant or member initially enters into occupancy and when vacating the dwelling unit), and the conditions under which the tenant or member may participate in the inspection of the premises which is the basis for such statement.

11. The circumstances under which management or the cooperative may enter the premises during the tenant's or member's possession thereof, including a periodic inspection of the dwelling unit as a part of a preventive maintenance program.

12. Responsibility of tenant or member to advise management or the cooperative of any planned absence for an extended period, usually 2 weeks or more.

13. Agreement that tenant or member may not let or sublet all or any part of the premises without the consent of management or cooperative and FmHA.

14. Understanding that should the RRH project be sold to a buyer approved by FmHA, the lease will be transferred to the new owner.

15. The formalities that shall be observed by management or the cooperative and the tenant or member in giving notice one to the other as may be called for under the terms of the lease or occupancy agreement.

16. The circumstances under which management or the cooperative may terminate the lease or occupancy agreement, all limited to good cause, and the length of notice required for the tenant or member to exercise the right to terminate.

17. The procedure for handling tenant's or member's abandoned property as provided by State law.

18. Disposition of lease or occupancy agreement if building becomes uninhabitable because of fire or other disaster. Right of owner or cooperative to repair or rehabilitate the building within a certain period or terminate the lease or occupancy agreement.

19. The agreement that any tenant or member grievance or appeal from management's or cooperative's decision shall be resolved in accordance with procedures consistent with FmHA regulations covering such procedures which are posted in the rental office or at the cooperative. For Section 8 tenants, grievance and appeal procedures if said procedures are in place.

20. That in the event of borrower prepayment of the FmHA loan, all leases will be handled in accordance with paragraph VIII.A. of this exhibit and all procedures specified in § 1965.90 of subpart B of part 1965 of this chapter will be followed. No tenant contribution to rent may be increased by reason of prepayment for the term of the lease. An escalation clause for rent changes approved by FmHA for budgetary reasons will continue to be applicable.

21. That the lease may be terminated by the tenant with 30 days notice, prior to expiration of its term for "good cause" such as moving to another location for employment, loss of job, severe illness, death of spouse, or other reasons customary or mandatory in the community, or after notification by RRH borrower of intent to prepay. The prior notice on which a cooperative member may cancel an occupancy agreement for "good cause" shall be 4 months.

22. The usual signature clause attesting that the lease or occupancy agreement has been executed by the parties.

E. *Prohibited Lease or Occupancy Agreement Clauses.* Clauses in the classifications listed below shall not be included in any lease or occupancy agreement.

1. *Confession of Judgment.* Prior consent by tenant or member to any lawsuit the landlord or board may bring against the tenant or member in connection with the lease or occupancy agreement and to a judgment in favor of the landlord or board.

2. *Distraint for Rental or Occupancy Charge or Other Charges.* Authorization to the landlord or cooperative board to take property of the tenant or member and hold it as a pledge until the tenant or member performs any obligation which the landlord has determined the tenant or member has failed to perform.

3. *Exculpatory Clause.* Agreement by tenant or member not to hold the landlord or landlord's agents or cooperative board liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents or the cooperative board.

4. *Waiver of Legal Notice by Tenant or Member Prior to Actions for Eviction or Money Judgments.* Agreement by tenant or member that the landlord or board may institute suit without any notice to the tenant or member that the suit had been filed.

5. *Waiver of Legal Proceedings.* Authorization to the landlord or board to evict the tenant or member or hold or sell the tenant's or member's possessions whenever the landlord or board determines that a breach or default has occurred.

6. *Waiver of Jury Trail.* Authorization to the landlord's or board's lawyer to appear in court for the tenant or member and to waive the tenant's or member's right to trial by jury.

7. *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's or board's lawyer to waive the tenant's or member's right to appeal on the ground of judicial error in any suit or the tenant's or member's right to file a suit in equity to prevent the execution of a judgment.

8. *Tenant or Member Chargeable With Costs or Legal Actions Regardless of Outcome.* Agreement by the tenant or member to pay attorney's fees or other legal costs whenever the landlord or board decides to take action against the tenant or member even though the court finds in favor of the tenant or member. (Omission of this clause does not mean that the tenant or member, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant or member loses the suit).

F. *Modifications of Lease or Occupancy Agreement-Notification to Tenants or Members.* The landlord or board may modify the terms and conditions of the lease or occupancy agreement, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant or member, together with the tender of a revised lease or occupancy agreement or an adendum revising the existing lease or occupancy agreement. This notice and tender shall be delivered to the tenant or member either by first-class mail, properly stamped and addressed or hand delivered to the premises to an adult member of the household.

The date on which the notice shall be deemed to be received by the tenant or member shall be the date on which the first-class letter is mailed or the date on which the copy of the notice is delivered to the premises. The notice must be received at least 30 days prior to the last date on which the tenant or member has the right to terminate the occupancy without executing the revised lease or occupancy agreement. The notice must advise the tenants or members that they may appeal modifications to the lease or occupancy agreement in accordance with the FmHA tenant grievance and appeals procedure (supart L of part 1944 of this chapter) if the modification will result in a denial, substantial reduction, or termination of benefits being received.

The same notification will be applicable to any changes in the rules and regulations for the project.

G. *Occupancy Rules.* Occupancy rules establish the basis for the management-tenant or member relationship. Occupancy rules and regulations must be provided and explained by the project management to enable the tenant or member to understand the purposes, objectives, and standards of the project. The rules will be approved by the FmHA State Director or designee, generally together with the project management plan, management agreement, and lease or occupancy agreement form.

1. All rules for occupancy and rent or occupancy charge structures will be in writing posted conspicuously in the borrower's and/or manager's offices and provided to each tenant or member with the lease or occupancy agreement.

2. Proposed changes of any rules for occupancy must be made available to each tenant or member at least 30 days in advance of implementation, and tenants or members must be advised that they may appeal changes in accordance with the FmHA tenant grievance and appeals procedure (subpart L of part 1944 of this chapter).

3. No rule may infringe on the rights of the rental tenants to organize an association of tenants. Such associations may be organized to bargain with management, as well as to act socially and/or provide for the welfare of its members. The project management person or organization should be available and willing to work with a tenant organization.

4. Rules may be promulgated that prohibit activities which are detrimental to management, tenants and members. Such activities include threats to the health or safety of other tenants or members or the employees of the borrower, interference with the quiet enjoyment of the premises by other tenants or members, or damage to the physical structure of the project.

5. The borrower may choose to provide rules for non-elderly projects that either permit or exclude pets except that no rules may be promulgated that would prohibit the occupancy of a household member who requires the services of a trained and certified seeing eye or hearing ear animal to achieve the normal function of that household member.

6. For each RRH project or portion of a project specifically designated for the elderly, the borrower must have established project rules permitting elderly, handicapped or disabled tenants to keep commonly accepted household pets. These pet rules are to be governed by the following guidelines:

a. Pet rules must not:

(1) Prohibit, prevent, restrict or discriminate against any tenant who owns or keeps a pet in their apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated.

(2) Prohibited, prevent, restrict or discriminate against any applicant who owns a pet with respect to obtaining occupancy to the project.

(3) Charge an extra monthly rental charge for pets.

b. Borrowers with operational projects must consult with the tenants of the project when revising pet rules and document to the District Director how the consultation process was conducted.

c. Borrowers with new projects will establish pet rules prior to occupancy, but may revise those rules based on tenant comments and suggestions received after rent-up begins.

d. Pet rules will be approved by FmHA as part of, or an amendment to, the project lease. FmHA approval will be granted when the rules meet the provisions and intent of this subparagraph.

e. Pet rules will be reasonable and will be written to consider at least the following factors:

(1) Density of project units.

(2) Pet Size.

(3) Type of pet.

(4) Potential financial obligations of tenants who own or keep pets.

(5) Standards of pet care.

(6) Pet exercise areas.

(7) State and local animal laws or ordinances.

(8) Liability insurance.

f. Pet rules must allow the borrower or project manager authorization to remove from the project any pet whose conduct or condition is duly determined to constitute a nuisance or threat to the health or safety of other tenants or members in the project or persons in the surrounding community.

7. Initial rules will be attached to the lease or occupancy agreement. Approval by FmHA for changes and additions may be requested annually with submission of annual reports or more frequently only in the case of an emergency situation.

8. The following items illustrate areas that should be addressed in rules developed by management and provided to all tenants or members prior to move-in:

a. Explanation of rights and responsibilities under the lease or occupancy agreement. Where a non-English language is common to a project area, a lease or occupancy agreement written in that language should also be provided.

b. Rent payment or occupancy charge policies and procedures should be fully explained.

c. Policy on periodic inspection of units.

d. Responding to tenant or member complaints.

e. Maintenance request procedure.

f. Project services and facilities available to tenants or members.

g. Office location, hours, and emergency telephone numbers.

h. Map showing location of community facilities including schools, health care, libraries, parks, etc.

i. Restrictions on storage and prohibition against abandoning vehicles in the project area.

j. A rental project newsletter or other printed material distributed to potential tenants or the public. If a newsletter or other printed material is desired, it must contain an appropriate nondiscrimination statement, or fair housing slogan or logotype. Cooperatives will publish a monthly newsletter.

k. Community and public transportation schedules.

9. Tenant or member may be permitted to have a guest(s) visit their household. However, an adult person(s) making reoccurring visits or one continuous visit of 14 days and nights in a 45-day period without consent of the management will be counted as a household member(s).

10. No provisions may be incorporated into occupancy rules that would discriminate against or otherwise deny equal opportunity to any person (whether the tenant or a person associated with the tenant) in the terms, conditions, or privileges of rental of a dwelling unit, or in the provision for services or facilities in connection wherewith, because of race, color, religion, sex, familial status, National origin, or handicap.

H. *Security Deposits.*

1. Security deposits are encouraged and they should be used when it is reasonable and customary for the area for assurance of rental payment or charges for damages. The amount of security deposits must be reflected in the borrower's management plan and may not be changed without the written consent of the FmHA District Director. When security deposits are used, they should be an amount equal to the net tenant contribution for one month or basic rent, whichever is greater. Families receiving a HUD rental subsidy will pay security deposits according to HUD requirements. In an elderly project, the amount of additional security deposit for pets must be reasonable and not designed to prohibit or discourage tenancy but in no case should it exceed the basic rent of the project. Where a seeing eye or hearing ear animal is necessary for the normal function of a household member, an additional security deposit for the animal may not be charged. A membership fee, equal to one month's occupancy charge, will be required from members of a cooperative.

2. Security deposits for persons eligible for RA or Section 8 assistance shall be administered in a manner to prevent hardship on the household. If such tenants or members cannot pay the full amount initially, they may be given terms that should ordinarily:

a. For RRH projects, not exceed a downpayment of 25 percent of adjusted monthly income plus $15 per month or that amount needed monthly to complete the security deposit within twelve months, whichever is greater. For RCH projects, not exceed an initial payment of $25 plus the amount needed monthly to complete the membership fee within 12 months.

b. For low-income farmworkers in an LH project, not exceed $25 downpayment and $15 per month until an equivalent of one month's project rent is reached. In the case of migrants who will occupy the units for a short period of time, exception to this policy by FmHA may be made upon written request from the borrower when it is shown that such deposits need to be raised to protect the interest of the government and it will not create a hardship on the tenants.

3. Security deposits or membership fees shall be handled in accordance with any State or local laws governing security deposits. Both security deposits and membership fees shall be deposited in a separate account at a Federally insured institution, and shall be handled in accordance with any State or local laws governing such deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management in the management plan, and until so used, shall be held by the borrower in trust for the respective tenants. Funds in the Membership Fee Account shall only be used for authorized purposes, until so used, shall be held by the borrower in trust for the respective members.

4. Borrowers may assess fair and reasonable charges to the security deposit or membership fee for damage and loss caused or allowed by the tenant or member. An itemized accounting for such charges must be presented to the tenant or member after the move-out inspection provided for in paragraph X.E.2. of this exhibit, unless the tenant or member has abandoned the property and his/her whereabouts are unknown and cannot be ascertained after reasonable inquiry.

5. The owner may not increase, for persons with handicaps, any customarily required security or membership fee deposit for restoration made to earlier modifications that permitted the handicapped person's full enjoyment of the dwelling unit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restoration(s) at the end of the occupancy, the borrower may negotiate as part of such a restoration agreement, a provision requiring that the tenant or member pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations(s). The interest in any such account shall accrue to the benefit of the tenant or member.

I. *Special Lease or Occupancy Agreement Supplement.* Borrowers are encouraged to supplement lease or occupancy agreements, particularly of elderly, disabled, and handicapped tenants or members, to:

1. Permit the borrower, with competent medical or clergical advice, to contact a predetermined sponsor(s) or guardian(s) to effect the transfer of the tenant or member to other appropriate housing when the tenant or member is (a) no longer able to functionally make self-determinations, or (b) to adequately provide self-care within the facilities and services provided by the project. A sponsor or guardian would be a person(s) designated by the tenant or member, generally a family member, friend, doctor, or member of the clergy.

2. Provide instruction to the borrower of a person(s) to contact in the event of death of the tenant or member.

3. When a lease or occupancy agreement has been supplemented, the borrower should also obtain an agreement from the designated sponsor(s) or guardian(s) to assume responsibility for the tenant or member in the event of need as identified in subparagraphs 1 and 2 above.

J. *Leases for Section 8/Housing Voucher Tenants or Members.*

1. Borrowers/Management agents are encouraged to use HUD approved lease agreements. Evidence of HUD's approval should be contained in the borrower casefile.

2. The HUD approved lease must include modifications or addenda that meet the conditions or requirements of paragraphs VIII. A., B.1., B.2., and B.3.a. of this exhibit.

IX. *Rent or Occupancy Charge Collection and Account Servicing:* A pre-established day of the month should be the designated rental or occupancy charge collection day. The time and place of onsite collection and/or the correct address for payment by mail should be well publicized and consideration should be given to an after-hours depository if needed.

A. *Receipts.* A form of serially-numbered receipts should be selected for use and the collection agent held accountable for every receipt. Optional collection services may be considered when they are available.

B. *Delinquencies.* A system to identify and detect unpaid rents or occupancy charges should be instituted within the project. A penalty of up to $10.00 for late payment after a 10-day grace period, or the grace period prescribed by State law, may be permitted. The borrower should consider the circumstances causing the late payment before assessing any penalty. True hardship cases should not be assessed penalties; however, maintaining a firm and fair policy on collection encourages tenants or members to meet their rental obligations.

C. *Recapture of Improperly Advanced Rental Assistance and Interest Credit.* Recapture of improperly advanced RA and interest credit will be processed in accordance with 7 CFR part 1951, subpart N (available in any FmHA State or District office).

D. *Project Late Fees on Predetermined Amortization Schedule System (PASS) Accounts.*

1. Project late fees are charged on PASS account loan payments not received by FmHA before the eleventh (11th) day of the month as further described in § 1951.510(c)(2) of subpart K of part 1951 of this chapter (available in any FmHA office).

2. A borrower may request in writing a waiver of a late fee according to § 1951.50 (c)(2) of subpart K of part 1951 of this chapter (available in any FmHA State or District office). Borrowers may appeal a denial of a request for a late fee waiver under the Agency's uniform appeal procedures set out at subpart B of part 1900 of this chapter.

3. If the cause of the late fee is an FmHA accounting system error, the FmHA may suspend sending monthly billings to the borrower until the error is corrected. If delinquency persists after correcting the error, late fees will be charged. Late fees charged as a result of FmHA error may be waived by FmHA upon the borrower's written request.

4. Except for cooperatives, project late fees are not a project expense. Borrowers shall record a line item entry on Form FmHA 1930-7 showing late fees, offset by an equal transfer-in of the borrower's own funds or a reduction of the borrower's return to owner.

X. *Maintenance:* Maintenance is the process by which a project is kept up in all respects and includes land, buildings, and equipment. Maintenance responsibilities will be included in the management plan. Proper maintenance will help to keep a good image for the project, help to minimize vacancies, and help to preserve the project. Plans and policies for inspections, effective maintenance and repair are to be established at the outset and modified periodically as needed. The following types of maintenance are necessary:

A. *Routine Maintenance.* Routine maintenance and repairs will be those cost items and services included in the annual budgets to be paid out of the operations and maintenance expense account. It includes regular maintenance tasks of the project that can be prescheduled or planned for, based on equipment availability and property characteristics. This can include occasional items of a long term maintenance or repair nature (i.e. a water heater or exterior paint/stain touches) that can be afforded form the annual budget income. Also included are janitorial tasks performed on a regular basis to maintain the appearance of the project and to prevent an accumulation of debris and subsequent deterioration.

B. *Responsive Maintenance.* This includes all maintenance tasks performed in response to either requests for service from tenants or members or unplanned breakdowns. An essential part of any maintenance system is to plan for requests coming from the dwelling units and for emergencies occurring in the systems serving the apartments. The project manager or the cooperative's board of directors should develop a plan to focus on: who receives the requests, how they are handled, how specific employees or members are assigned to the tasks and what kind of records are kept. The capacity of the project manager or board to respond to requests and emergencies is one of the true tests of a successful maintenance program.

C. *Preventive Maintenance.* This is similar to inspection type maintenance. Regular checking and servicing of equipment and systems is done as required by service information. Preventive maintenance of mechanical systems, building exteriors, elevators, and heating and cooling systems in projects require specially trained personnel. The project manager should establish biweekly or monthly schedules in which the routine oiling, adjusting, replacing of filters, and the like is done based on manufacturer's manuals and specifications.

D. *Long Term Maintenance and Replacement (Curable Depreciation).* These are major expense items which normally do not occur on an annual basis and cannot be afforded from an annual budget. These expenses include items such as repaving the parking lot or repainting an entire building or project; replacement of most or all water heaters in one budget year. The borrower may request permission to use reserve funds to pay for these expenses when they occur. However, use of funds out of the reserve account must be preapproved by FmHA, except in dire emergency.

E. *Inspection Maintenance.* These are maintenance inspections performed periodically to discover problems before crisis situations develop. The following inspections of each apartment should be made at appropriate times:

1. *Move-in Inspection.* Before move-in occurs, the management and the applicant accepted for occupancy should together inspect the unit to be occupied and agree upon any needed repairs. A written inspection report shall be prepared and a copy retained in the tenant's or member's file. Any of the identified deficiencies not corrected prior to occupancy should be noted on the lease or occupancy agreement or inspection move-in report and signed by the tenant or member and borrower's or cooperative's representative.

2. *Move-out Inspection.* An inspection should be scheduled with the tenant or member when the management becomes aware that the tenant or member is moving out or has vacated the unit. Whenever possible, the inspection should be performed after the furniture has been moved out and before any portion of the security deposit or membership fee is returned to the tenant or member. Any repairs or costs to be charged to the tenant or member will be according to the terms of the lease or occupancy agreement, local law, and regulations governing security deposits or membership fees in paragraph VIII. H. of this exhibit.

3. *Periodic Inspection.* An inspection of this type should be made at least annually. The borrower should make provisions in the lease or occupancy agreement for periodic inspection of the units as part of a preventive maintenance program.

XI. *Rent or Occupancy Charge Changes:* It may be necessary as operating costs and/or revenues fluctuate to consider a change of rental or occupancy charge rates to keep the project viable. Before any change of rates may occur, prior written consent of FmHA is required. The procedure to request and implement a rent or occupancy charge change is specifically covered in Exhibit C of this subpart.

XII. *Borrower Project Budgets:*

A. *Budget Development and Preparation.* Borrowers are responsible for developing project budgets that generate operational income from project sources. The budgets must reflect realistic income sources, uses and amounts of funds, and allow realistic vacancy and contingency factors. Generated funds must be sufficient to pay the operating costs and authorized expenditures of the project including reserves and return on investment, leaving adequate cash on hand as a normal course of business. When project operational income is not sufficient to meet these project cash requirements, the borrower is responsible for providing non-operational funds authorized by FmHA to meet project budget requirements.

1. Budgets will be prepared according to the instructions contained in Form FmHA 1930-7, "Multiple Family Housing Project Budget."

2. Borrowers are required to develop a project budget annually.

3. Budgets will cover a 12-month period selected by the borrower that is to be the project fiscal year of operation.

4. Separate budgets will be developed for each project when the borrower owns more than one MFH project.

5. The priority order of planned and actual budget expenditures will be:

a. Critical operating and maintenance expenses.

b. FmHA debt service.

c. Reserve account requirements.

d. Other authorized expenditures.

e. Return on owner's investment.

6. Project funds may not be used for borrower organizational expenses, except in the case of a cooperative or a nonprofit organization.

7. When tenants pay their own utilities, an updated or current Exhibit A-6 to subpart E of part 1944 is to accompany each budget submitted to FmHA for approval with justification to either retain or change the utility allowance(s).

8. When planned expenses appear to be excessive for the area based on current cost data, the FmHA budget approval official may require reduction, or when not otherwise mutually resolvable, competitive bidding for the item or service to be provided whenever warranted (i.e., when there is identity of interest between the provider and the borrower, etc.) Likewise, in the case of unplanned unapproval actual expenses that are clearly excessive for the area based on current cost data, the FmHA budget approval official may limit payment for items or services to a competitive bid amount. Any unapproved expenditure actually paid which is clearly in excess of a fair and equitable amount will be required to be repaid to the project from any authorized return on owner's investment or from non-project sources, such that tenant rents will not be increased.

B. *Return on Investments Authorized by Borrower's RRH Loan Agreement/ Resolution.*

1. Limited profit borrowers may take the return authorized for the project's current budget year without further FmHA approval under the following conditions:

a. Payment may be made only once a year based on the project's financial condition as the end of the project fiscal year. Borrowers are encouraged to draw the return on investment in the days or weeks immediately following close of the fiscal year but not later than approval of the annual report by FmHA.

b. Payment must have been approved as part of the borrower's annual budget on Form FmHA 1930-7.

c. The project must have produced operational income at approved monthly rental rates during that year to cover all expenditures in accordance with the approved budget and when appropriate, a servicing plan.

d. The balance in the reserve account must be on schedule less any authorized withdrawals not requiring immediate redeposit. The amount of reduction of the annual reserve requirement approved as part of a servicing plan will be considered like an authorized withdrawal not requiring redeposit.

e. Payment of the return may not produce a year end deficit.

2. If operational income is not adequate in any given fiscal year to cover payment of the return to owner, FmHa may authorize the return to be paid from:

a. Excess funds available at the end of the following fiscal year of operation provided it does not result in a rent increase and the reserve account is current less authorized withdrawals. (Non-cash losses of the borrower entity do not qualify to be recouped in following years.) This option is authorized only for the year immediately following the year in which the return was not paid.

b. Release of reserve funds with District Director approval, provided:

(1) The Reserve Account will not be reduced below the amount required to be accumulated by that time considering adjustments for any previously authorized withdrawals; and,

(2) During the next 12 months, the amount in the Reserve Account will not likely fall below that required to be accumulated by the end of such 12-month period.

(3) This option is authorized only for the year immediately following the year in which the return was not paid. This does not apply to the return on investment waived while a special market rent (SMR) budget is in effect.

3. Borrowers operating under a servicing (workout) plan and/or using special servicing market rate rents that call for less than full debt service payment to FmHA shall forego and cannot recoup the annual return to owner for the budget year that such plans or rents are in place.

C. *Advancement (Loan) of Funds to a RRH Project by the Owner, Member of the Organization, or Agent of the Owner.*

1. Prior written approval by the District Director is required. Such advances may be authorized when justified by unusual short-term conditions but they are otherwise discouraged. Justification will be based on the following:

a. A review of the documented circumstances and the project operating budget before any funds are advanced (loaned).

b. Funds are not immediately available from any of the following sources:

(1) Reserve funds.

(2) Initial operating capital.

(3) An imminent rent increase.

2. The funds will be applied to ordinary project operating and maintenance expenses.

3. No interest will be charged or paid on the loan from project income.

4. No lien in connection with the loan will be filed against the property securing the FmHA loan or against project income. The advance may show as an unsecured project liability on financial statements prepared for year-end reports until such time as it is authorized to be repaid.

5. The pay-back of the advance (loan) may be permitted by the District Director provided the terms and conditions were mutually agreed to by the borrower and FmHA at the time of the advance and the financial position of the project will not be jeopardized. Payback should only be permitted on the advance when the FmHA debt is current and the reserve requirements are being maintained at the required levels.

D. *Special Budget Planning.*

1. Budgets may be prepared according to the special servicing guidelines of Subpart B of Part 1965 of this chapter when a project is experiencing abnormal vacancy or is otherwise detrimentally impacted by economic reversal in the community.

2. The borrower is responsible for obtaining FmHA approval of budget revisions that reflect significant change to approved operating cost levels that occur during the budget year. Minor revisions of a few line items may be entered on the current approved budget as "pencil" changes and initialed by the borrower and approved by FmHA. Major changes involving many budget line items will warrant a new budget being prepared and approved by FmHA.

XIII. *Accounting and Reporting Requirements and Financial Management Analysis:*

A. *General.* FmHA anticipates that RRH, RCH, and LH borrowers will account for all project income and expenses through a bookkeeping or accounting system as a normal business practice appropriately reflecting the complexity of project operations.

The degree of sophistication will also reflect such factors as the type of borrower; the size, location and type of project and the type of financial management information needed to provide adequate guidance and supervision to assure program objectives are being met.

1. Borrowers with loan agreements or resolutions are subject to the following conditions:

a. All RRH, RCH, and LH projects with loan agreements or resolutions approved on or after October 27, 1980, are required to comply with the provisions of this paragraph XIII.

b. All RRH, RCH, and LH projects with loan agreements or resolutions approved prior to October 27, 1980, will be guided by the recordkeeping and reporting requirements of their respective loan agreement or resolution.

(1) They are encouraged, however, to adopt the provisions of this section by amending their existing loan agreement or resolution.

(2) The State Director may require adoption of these provisions when deemed necessary as a loan servicing loan action.

c. Any amendment to an existing loan agreement, or resolution, requires concurrence of all parties and written approval by the State Director with advice from the OGC prior to enactment of the amendment.

2. Individual farm borrowers with non-rental LH units will be considered in general compliance with this paragraph by virtue of completing the recordkeeping and reporting requirements of their farm and home planning with FmHA as outlined in subpart D of part 1944 of this chapter.

3. Borrowers without loan agreements or resolutions are required to maintain information in sufficient detail to provide the necessary assurance that program objectives are being met. As necessary to protect the integrity of the program, the State Director may require the borrower to establish a system capable of accounting for project operations and reporting.

B. *Accounting System.* A bookkeeping and accounting system provides the financial information needed to effectively plan, control and evaluate project activity, whether required by FmHA or not. The type of system should be determined prior to loan closing, but it may be revised with FmHA approval to meet program objectives. FmHA may also prescribe the system to be used. Form FmHA 1930-5, "Bookkeeping System—Small Borrower," can be adapted to the bookkeeping needs of small MFH projects. Bookkeeping for MFM projects may be maintained using a cash, modified cash, or accrual method of accounting.

1. *Type of Project Accounts.* As used in this paragraph the term account is used interchangeable to mean either a ledger (or bookkeeping account) or an actual banking account. Depending upon the complexity of the accounting system being used, these accounts may be further subdivided into subsidiary ledgers or accounts to assist the borrower in providing the information needed for project financial analysis or reporting requirements. Regardless of the number or type of accounts established, or whether a bookkeeping and accounting system is required, the borrower must meet the following:

a. All project funds shall be held only in bank accounts insured by an agency of the Federal Government, or backed by collateral provided by the bank.

b. All funds in any account shall be used only for authorized purposes as described in their loan agreement or resolution and this paragraph.

c. All funds received and held in any account, except the tenant security deposit, membership fee, management reserve (patronage capital), shall be held in trust by the borrower for the loan obligation until used and serve as security for the FmHA loan or grant.

d. All project funds will be accounted for by adequate and clear accounting methods or practices that otherwise maintain proprietary identity of said funds.

e. Each project will maintain at least one demand deposit or checking account. However, it is not necessary for each bookkeeping account within one project to be maintained as a checking account.

f. In no case shall project fund accounts be pledged as collateral for non FmHA debts.

2 *Accounts.* All RRH, RCH, and LH borrowers will maintain, as a minimum, the accounts required by their loan agreement or resolution. The following accounts are standard for all RRH and RCH loans approved after October 27, 1980, and for those who have amended their previous loan agreements or resolutions to adopt these accounts, or those required by a servicing plan. The following listing of accounts also identifies the order of funding of each of the listed accounts through available project revenues each month:

a. *General Operating Account.* This account records all project income and disbursements. Excess project cash held in this account may be combined with other project funds described in this paragraph in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for the individual project accounts. This account may be further subdivided as follows:

(1) *Initial Operating Capital.* The initial operating capital may be in the form of cash, an irrevocable letter of credit, or in a combination of the two as set forth in § 1944.211(a)(6) of subpart E of part 1944 of this chapter. The borrower will have deposited the required initial operating cash into the General Operating Account by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. These funds will blend with other revenue that accrues to the account to cover budgeted expenditures including payment of return to owner. Any letters of credit will be supplied by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. Letters of credit will be maintained in the casefile. They must be renewed as needed so that a current letter of credit is always in effect. If a borrower does not renew the letter of credit they will be required to deposit an equivalent amount of cash into the General Operating Account before the Letter of Credit expires. If a borrower supplied all or part of the initial operating capital in the form of a letter of credit and the borrower makes cash deposits into the General Operating Account for operating purposes, the borrower can provide the District Office with a new letter of credit in a smaller amount with evidence of the cash deposit. The new letter of credit and the cash deposit must total the required initial operating capital. The old letter of credit will be returned to the borrower. After two, but before five full (12 month) borrower fiscal years of project operation, the borrower may request (in writing) the State Director's authorization to make a one time withdrawal of the initial operating capital, or a part of it. The withdrawal can be in the form of cash, release or reduction in the letter of credit, or a combination of both. The one-time withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that:

(i) The project has achieved at least a 95% occupancy level at time of the withdrawal request,

(ii) The withdrawal will not affect the financial intergrity of the project. After withdrawal, approximately 10 percent of projected operation and maintenance expenses should remain in the general operating account in excess of current liabilities then outstanding. The reserve account must be on schedule less authorized withdrawals. The borrower must demonstrate that all prudent maintenace is being planned and performed, and payment of necessary project expenses are not being deferred,

(iii) The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next year of operation, except that rent increases needed because of normal increases of operation and maintenance expenses unrelated to the withdrawal may be approved.

(iv) the State Director has reviewed and approved any required borrower reports before the Initial Operation Capital is withdrawn. Promptness is expected but actual withdrawal of funds could occur in the sixth year.

(2) *Deposits.* All income and revenue from the housing project shall, upon receipt, be immediately deposited in the General Operating Account. This will include rent or occupancy charge receipts, housing subsidy payments (including HUD Section 8 and FmHA RA payments), occupancy surcharge monies, laundry revenue, or any other project income including interest earned on project accounts. The borrower may also deposit other funds at any time which are to be used

for purposes authorized by this section including transfers from the Reserve Account.

(3) *Disbursements.* Not later than the 15th of each month, out of the General Operating Account, the borrower shall pay or fund the actual, reasonable and necessary monthly project expenses. Current expenses may include the initial purchase and installation of furnishings and equipment with any other funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. (However, nonprofit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in FmHA Instructions 1944-D and E.) Other authorized disbursements are FmHA approved installments of debt service including occupancy surcharge, real estate tax and insurance escrow, reserve, and return on investment as provided in paragraph 2.c. Any balance remaining in an RRH General Operating Account except as authorized above, may be retained in this account or transferred to the Reserve Account. Any balance remaining in an RCH General Operating Account will be transferred into the cooperative's Patronage Capital Account at the end of the fiscal year.

(4) *Unauthorized Disbursements.* Except for cooperatives, late fees charged the borrower according to Subpart K of Part 1951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA from payments made from project income, the project General Operating Account must be reimbursed from nonproject income of the owner or management agent or deducted from the owner's return on investment.

b. *Real Estate Tax and Insurance Escrow Account.* According to the borrower's management plan, project funds for periodic payment(s) of real estate taxes and real property insurance may be deposited in a Real Estate Tax and Insurance Escrow Account or held in the General Operating Account as cash on hand. The escrow account may be an interest bearing account. Deposits to the account should be in monthly increments of one-twelfth of the annual anticipated real estate tax and insurance payments. Any interest earned shall accrue to the project as project operational cash income.

c. *Reserve Account.* The borrower will initiate monthly deposits in this project account, preferably an interest bearing account, starting the same month the first loan payment is due FmHA. As projects age, the required Reserve Account level may be adjusted to meet anticipated "Life-cycle" needs, including equipment and facility replacement costs, by amending the loan agreement/resolution. Deposits shall be made according to the following:

(1) Immediately after paying each installment for the orderly retirement of the FmHA loan, as provided in the borrower's promissory note, required reserve installments shall be transferred to the Reserve Account at least at the monthly rate stipulated by the borrower's loan agreement or resolution. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution. Monthly transfers shall be resumed the month following withdrawals that decrease the Reserve Account balance below its required level until it is restored to the specified total minimum sum.

(2) Reserve Account funds not immediately needed for authorized purposes may be invested in saving certificates insured by a Federal agency, or invested in readily marketable obligations of the United States Treasury Department, the earnings on which shall accrue to the project as project income.

(3) Any deposit and withdrawal from the Reserve Account should be recorded on a withdrawal format for tracking and reconciliation of the account similar to that found at Exhibit B-14 of this subpart.

(4) Any amount in the reserve account which exceeds the total sum specified in the loan agreement or resolution may be transferred to the General Operating Account for the authorized purposes only when it is agreed between the borrower and the FmHA to be in excess of the requirement and there is a specific need for the excess funds. However, the FmHA District Director may direct the excess sum to be retained in the Reserve Account when determined necessasry to protect the Government's security interest including a "trust fund" to provide future tenant or member subsidy when current subsidy agreement(s) expire.

(5) Funds in the Reserve Account may be used for purposes in accordance with this paragraph. The borrower will request withdrawal of reserve funds in a written or confirmed manner. The District Director will provide written authorization in a timely manner to the borrower for any authorized withdrawal of funds by the use of a letter in the form of Exhibit B-10 of this subpart before the borrower actually withdraws any funds. Any conditions for approval will be indicated in the letter. The District Director may post-approve the emergency use of reserve funds if they were used for authorized purposes and their expenditure would have been approved had a request for approval been submitted prior to the withdrawal. The borrower must provide documented evidence showing the actual amount and use of funds before the post-approval action. Authorized purposes are:

(i) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for that purpose.

(ii) To pay costs of repairs or replacements to the housing, furnishings or equipment or shortfalls of current expenses. Withdrawal for planned authorized purposes should be approved in advance during the annual budget approval process. Annual budgets will include realistic routine income and expense levels to minimize use of the reserve for routine expenses (operating deficits).

(iii) To make improvements to the housing project without creating new living units or to retrofit units to make them accessible to the physically handicapped.

(iv) For other purposes desired by the borrower, which in the judgment of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security.

(v) To pay a return on investment at the end of the borrower's project operating year, provided that after such disbursements the amount in the Reserve Account will not be less than that required by the loan agreement or resolution to be accumulated by that time minus any authorized withdrawals, and the amount in the Reserve Account will likely not fall below that required to be accumulated during the next 12 months.

(A) In the case of borrowers operating on a limited profit basis, to pay a return on the borrower's initial investment as identified in the loan agreement or resolution.

(B) In the case of borrowers operating on a full profit basis, to pay an annual return as specified in the borrower's loan agreement or resolution.

(6) Exhibit B-14 of this subpart may be used by the borrower and FmHA to record deposits and withdrawals in the Reserve Account and to perform reconciliation of the account to determine the current account balance.

d. *Management Reserve Account (Patronage Capital Account).* Any funds remaining in the General Operating Account of an RCH project at the end of the fiscal year will be transferred and maintained in a lump sum in an interest bearing patronage capital account and will be handled according to any state laws governing patronage capital. That amount will then be equally assigned by bookkeeping entry only to each member. The patronage capital funds will be held by the cooperative in trust for the respective member until that member terminates membership in the cooperative, provided the member has paid all charges and costs due the cooperative. The patronage capital funds will not be used for any other purpose.

e. *Security Deposit or Membership Fee Account (when applicable).* Upon receipt, all security deposit or membership fee funds collected shall be recorded in a bookkeeping account that is kept separate from the project bookkeeping accounts. These funds shall be deposited in a separate bank account that is kept separate from any project funds and will be handled according to any State or local laws governing security deposits. Funds in the Security or Membership Fee Deposit Account shall be used only for authorized purposes as intended and represented by the project management plan. They shall be held by the borrower or borrower's management agent in trust for the respective tenants or members until so used. Any amount of the Security Deposit Account which is retained by the borrower as a result of lease or occupancy agreement violations shall be transferred to the General Operating Account and treated as income of the housing.

(1) The owner will follow all state and local requirements governing the handling and disposition of security or membership fee deposits.

(2) In no case, will interest earned on security or membership fee deposits accrue to project management or the owner of a rental project. Any interest earned but not returned to the tenants, or in the case of a cooperative, interest earned on membership fees but not returned to members will, accrue to the

project's General Operating Account for disposition as outlined in the management plan.

C. *Borrower Reporting Requirements.* Certain reports are necessary to verify compliance with FmHA requirements and to aid the borrower in carrying out the objectives of the loan. Some reports must be submitted with the FmHA payments and others submitted to FmHA either monthly, quarterly or annually. Exhibits B–6, B–7, and B–8 of this subpart (Management Handbook), are to be used as a guide for determining when reports are due and the number of copies required. The following reports will be prepared and submitted by the borrower:

1. *Quarterly Reports:*

a. Submit Form FmHA 1930–7, by the tenth day following each quarter year to the District Office to reflect the project operations for the preceding quarter. Quarterly reports will generally be completed on a cash basis, but may also be completed on a modified cash or accrual basis with appropriate modifications made on the form. This form will be retained through one fiscal year.

b. Submit Form FmHA 1944–29, with the payment to the District Office. This form must be submitted each month to report overage, occupancy surcharge, and/or request RA, even if a loan payment is not submitted. This form reflects occupancy in the project as of the first day of the month preceding the payment due date. The form will be retained indefinitely.

c. For LH projects, Form FmHA 1944–29 will be submitted monthly for the LH tenants who receive RA. Otherwise, the Form FmHA 1944–29 covering all LH tenants will be submitted to FmHA at least once annually with the annual reports. The form will be retained indefinitely.

2. *Annual Reports:* Annual reports may be completed on a cash, modified cash, or an accrual basis. The reports will be retained through three fiscal years. Between 30 days prior to the end of a fiscal year and 30 days following the close of the borrower's fiscal year, (a 60-day period) the borrower will submit the following reports to the FmHA District Office:

a. Form FmHA 1930–7, showing all planned project income and expenses for the next year as well as actual project income and expense for the past year.

b. Form FmHA 1930–8, "Year End Report and Analysis For Fiscal Year Ending ______________," for the project.

c. Audit report or verification.

(1) Submission of audit reports or verifications is not required at the time annual reports are submitted.

(2) All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), as set forth in the "Government Auditing Standards" (1988 revision), establish by the Comptroller General of the United States and any subsequent revisions. State and local governments local governments and Indian tribes must also meet the audit requirements set forth in title 7 CFR part 3015, Subpart I, when applicable. For guidance in meeting these requirements, the auditor should refer to the AICPA Audit and Accounting Guide for "Audits of State and Local Government Units."

(3) For all other borrowers, the USDA Office of Inspector General has published on audit guide entitled "Audit Program."

(4) Audits prepared on tax basis are not acceptable.

(5) The audit preparer may not be the same person or firm that prepares monthly and/or annual reports for the borrower.

(6) For projects with 25 or more units, the audit will be prepared by a LPA licensed on or before December 31, 1970, or a CPA.

(7) Projects with 24 units or less will need to provide a compilation or a verification prepared by an individual who is qualified by education and/or experience and who is independent of the borrower or by a committee of the membership not including any officer, director, or employee of he borrower; however, the State Director may also require audits by a CPA or LPA for any project.

d. Copy of the minutes of the annual meeting, when applicable.

e. Energy audit for review when applicable according to the provisions of Exhibit D of this subpart.

f. Any other related material that may be requested by the District Director.

D. *Financial and Management Analysis.* Financial and management analysis provides information on the status of the project's operation. Regular analysis by the borrower and/or FmHA can help identify strengths, weaknesses and reasonableness of income and expenses so that appropriate corrective actions can be taken. Some methods of analysis FmHA encourages are:

1. *Budget Analysis:* Using quarterly (or monthly if deemed necessary) and annual reports, the borrower or project manager compares actual income and expenses with the budgeted amounts. Any differences between the budget and actual figures indicate areas of the project operation where the manager may need to focus added attention and/or take corrective action.

2. *Ratio Analysis:* Ratios are an effective tool for financial analysis. They prescribe various measures of actual operating performance. FmHA and borrowers should develop a data base of recorded ratios for comparative analysis. Some useful ratios are:

a. Vacancy Rate=Total vacancy days for the month/Total unit days for the month.

b. Resident Turnover Ratio=Total units becoming vacant during the period/Average units occupied for the period.

c. Expense Ratio=Total Expense/Total Income.

d. O&M Cost Per Unit=Total expense (By category)/Total No. of Units.

e. Working Capital Ratio=Current Assets/Current Liabilities.

f. Collection Ratio=Total Collections/Total Occupancy Roll.

g. Percent of revenue from Government Sources=FmHA Rental Assistance or HUD Section 8 Payments/Total Market Rent.

h. Management Expense Per Unit=Management Fee and Costs/Total No. of Units.

XIV. *Termination and Eviction:* Borrowers and project managers should actively develop ways and means to avoid forced termination of leases or occupancy agreements and the eviction of tenants or members by considering the following:

A. *Entitlement to Continued Occupancy.*

1. *General.* The borrower or project manager may terminate or refuse to renew any occupancy only for material noncompliance with the lease or occupancy agreement or other good cause such as:

a. Noneligibility for tenancy.

b. Action or conduct of the tenant or member which disrupts the livability of the project by adversely affecting the health or safety of any person, or the right of any tenant or member to the quiet enjoyment of the premises and related project facilities, or that has an adverse financial effect on the project.

c. Expiration of the lease or occupancy agreement period is not sufficient grounds for eviction of a tenant or member.

2. *Material Noncompliance.* Material noncompliance with the lease or occupancy agreement includes:

a. One or more substantial violations of the lease or occupancy agreement; or

b. Nonpayment or repeated late payment of rent or occupancy charge or any other financial obligation due under the lease or occupancy agreement (including any portion thereof) beyond any grace period constitutes a substantial violation; or

c. Repeated minor violations of the lease or occupancy agreement which disrupt the livability and harmony of the project by adversely affecting the health or safety of any person, or the right of any tenant or member to the quiet enjoyment of the leased premises and the related project, or that have an adverse financial effect on the project.

d. Admission to or arrest for the use of, possession of, sales of, distribution of or any other illegal involvement with a controlled substance, whether it be by the tenant or member, a household member or a household guest.

3. *Other Good Cause.* Conduct cannot be considered as other good cause unless the borrower or project manager has given the tenant or member prior notice that the conduct will constitute a basis for termination of occupancy.

4. *Tenant or Member Benefits During Termination through Eviction*

a. Tenant or member households may continue occupancy through the specified termination date if move-out is voluntary, or to the specified date in a judicial order of eviction.

b. RA payments will be handled as follows:

(1) For failure to recertify, refer to paragraph VII.F.5.d. of this subpart.

(2) For all other terminations, RA will be withheld for that unit and payments will be suspended until the tenant or member voluntarily moves out or is evicted by judicial order. If judicial action nullifies the termination process, RA will then be requested for the tenant or member retroactive to the date it was withheld based on a verified tenant certification as of that date. If eviction occurs, the RA will then be assigned to the next eligible tenant or member.

5. *Rent Overburden.* Any tenant household (except those receiving Section 8 benefits) paying more than the contribution levels cited in paragraphs IV.A.2.c. (1) or (2) or (3) of this exhibit toward rent, including utilities, is considered to be experiencing rent overburden. Whenever a tenant is experiencing rent overburden, borrowers are encouraged to utilize any available and compatible governmental rental subsidies including FmHA RA and/or interest credit; or to assist tenants in applying for Section 8 housing assistance to minimize termination of tenancy. For purpose of this provision, the term "rent overburden" also refers to occupancy charges paid by cooperative members.

B. *Notice of Lease or Occupancy Agreement Violation.* Any notice of lease or occupancy agreement violation must be based on material violation of the lease or occupancy agreement terms or for other documented good cause as determined by the borrower or the project manager.

1. The notice of lease or occupancy agreement violation will be handled according to the terms of the lease or occupancy agreement. Tenants or members will be given prior notice of lease or occupancy agreement violation according to State or local law. The notice must:

a. Refer to relevant provisions in the lease or occupancy agreement.

b. State the violations with enough information describing the nature and frequency of the problem to enable the tenant or member to prepare a response. In those cases where the lease or occupancy agreement violation is due to the tenant's failure to pay rent or the member's failure to pay occupancy charge, a notice stating the dollar amount of the balance due on the rent or occupancy charge account and the date of such computation shall satisfy this requirement.

c. State that the tenant or member will be expected to correct the lease or occupancy agreement violation by a specified date.

d. Advise the tenant or member that if he or she has not corrected the stated violation by the date specified, the borrower may seek to terminate the lease or occupancy agreement by bringing forth a judicial action, at which time the tenant or member may present a defense.

2. The notice shall be accomplished by: (a) Sending a letter by first class mail, properly stamped and addressed, to the tenant or member at his or her address at the project, with a proper return address; and (b) Serving a copy of the notice on any adult person answering the door at the dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the tenant or member shall be the date on which the first class letter provided for in this paragraph is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

C. *Notice of Termination.* Should the tenant or member fail to meet the condition(s) or correct the violation(s) stated in the notice of lease or occupancy agreement violation by the date specified, the tenant or member will be notified that the occupancy is terminated and that eviction is being sought through the appropriate judicial process according to State or local law. The notice will be accomplished in the same manner used with the notice of lease or occupancy agreement violation.

Note: In those states where the notice of lease or occupancy agreement violation automatically becomes the notice of termination after a prescribed period of time, the requirements of the notice of termination have been met.

D. *District Director Review.* A copy of any notice to terminate, together with a copy of the earlier notice of lease or occupancy agreement violation, will be forwarded to the FmHA District Office at the same time it is sent and delivered to the tenant or member. If in the opinion of the District Director, the notices are determined to be in compliance with this paragraph XIV and any applicable State Supplements, no further action is required. If either of the notices are found to be improperly prepared, the District Director will (a) inform the borrower how either of the notices is improper and (b) indicate the borrower has the option to re-issue the improper notice if warranted by the circumstances. The District Director will not indicate any opinion to the borrower or project manager on the merits of the lease or occupancy agreement violation or termination at this time.

XV. *Security Servicing;* Security servicing, as referenced in this exhibit, concerns the borrower's general responsibilities in relation to the loan agreement or resolution, mortgage, and other loan documents. It does not deal with security items between the borrower and the tenants or members. FmHA will look to the borrower to fulfill its obligation according to the requirements of the loan agreement or resolution, note, mortgage, and other legal or closing documents. Some items of special emphasis are:

A. *Fidelity Coverage.* It is the borrower's overall responsibility as described in the Management Plan to see that fidelity coverage is in place on any personnel entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable property other than money or securities. The borrower should have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. Coverage must be from a company licensed to provide coverage in the state where the project is located. Fidelity coverage obtained should utilize standard industry forms copyrighted by an organization such as the American Association of Insurance Services (AAIS), Insurance Services Office, Inc. (ISO), or the Surety Association of America (SAA). Use of the following guidelines will meet the administrative intent of FmHA:

1. Fidelity coverage policies must declare in the Insuring Agreement(s) that the insurance company will provide protection to the insured against the loss of project money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by any "employee," whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage. The FmHA minimally requires any policy to include an insuring agreement that covers employee dishonesty.

2. The types of coverage policies acceptable to FmHA are:

a. *Blanket crime policy.* This type of policy usually provides the broader fidelity coverage and economy of cost options. Premiums are subject to discount based on the level of internal control exercised by the insured operation. This type of policy can provide the following insuring agreements:

(1) Employee Dishonesty—Form A, Blanket. (Required)

(2) Loss Inside the Premises—Money and Securities Broad Form. (Recommended)

(3) Loss Outside the Premises—Money and Securities Broad Form. (Recommended)

(4) Depositor's Forgery or Alteration. (Recommended)

b. *Fidelity Bond.* Fidelity bonds limit coverage only to employee dishonesty. Fidelity bonds are generally used when one or two employees are covered. Premiums are based on established rate charges that are usually greater than for blanket crime policies.

(1) Schedule and Position Bonds. A schedule bond covers a named employee and is acquired with each change of employment. A position bond covers a named position of responsibility and permits continuous coverage even though the person holding that position changes. Of the two, a position bond is preferred by FmHA.

(2) Blanket Bonds. Blanket bonds cover all employees in either of two forms:

(i) Commercial Blanket Bond (Form A). This bond limits coverage to each loss, irrespective of how many persons are involved. This form of bond is available on a "standard" basis.

(ii) Blanket Position Bond (Form B). This bond limits coverage to each employee, hence it can provide greater protection if there is collusion of two or more persons. This is a non-standard form of bond available from some insurance companies who use their own individualized forms.

3. *Endorsement requirements.* The FmHA requires only an endorsement listing all FmHA financed properties covered under the policy or bond. The policy or bond may also include properties or operations other than FmHA financed properties on separate endorsement listings.

4. Individual or organizational borrowers will have fidelity coverage when they have employees with access to project assets as cited in paragraph XV.A.; otherwise, a management company with exclusive access to the borrower's assets will have the fidelity coverage.

5. Borrowers who use a management agent with exclusive access to project assets as cited above will require the Agent to have fidelity coverage on all principals and employees with access to the project assets. Should active management revert to the

borrower, the borrower will obtain fidelity coverage as specified in Item 1 of this paragraph as a first course of business.

6. Fidelity coverage is not required when a loan is made to an individual (a natural person) or a General Partnership and that person or general partner will be responsible for a project's financial activities. (An individual person cannot bond or obtain coverage against its own actions.)

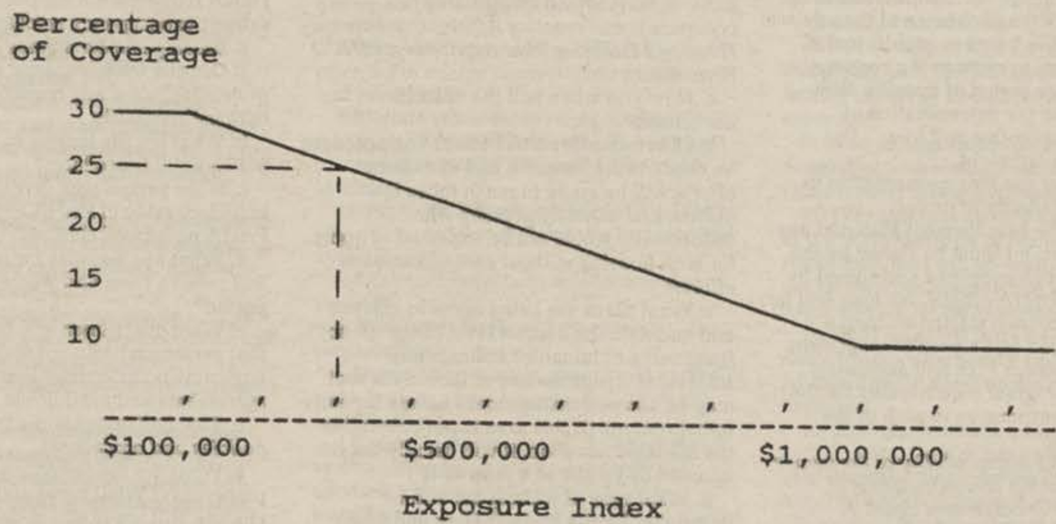
7. In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

8. A Limited Partnership will not be required to have fidelity coverage on its general partners UNLESS one or more of its general partners perform financial acts coming within the scope of the usual duties of an "employee."

9. The amount of fidelity coverage may be the greater of $5,000 or the amount determined using the following exposure index formula and coverage chart in sequence:

a. Exposure Index = 10 percent of budgeted gross basic rent income, plus 5 percent of 60 days budgeted cash requirement, plus 20 percent of the reserve account balance.

b. Fidelity Coverage is calculated by multiplying the exposure index by the corresponding percentage of coverage taken from this chart. Example: $300,000 × .25 = $75,000 fidelity coverage.



10. A deductible is designed to allow flexibility in balancing what the project can prudently pay from its own assets, at a time of loss, against the economy of annual premiums in its annual budget. The following deductible levels will meet FmHA requirements:

Fidelity coverage	Deductible level
Under $50,000	$1,000
In the area of $100,000	2,500
In the area of $250,000	5,000
In the area of $500,000	10,000
In the area of $1,000,000	15,000

11. A borrower's fidelity coverage premium will be a project expense.

12. A fidelity coverage premium for a management agent's principals and employees, which generally includes project site employees, will be included in the management fee.

13. If fidelity coverage is maintained at minimum levels, it should be reviewed annually and adjusted when necessary.

B. *Insurance.* The minimum amounts and types of insurance required of the borrower will be determined by FmHA in accordance with subpart A of part 1806 (FmHA Instruction 426.1) and subpart B of part 1806 (FmHA Instruction 426.2). All references to County Supervisor shall be construed to mean District Director when applied to the multiple housing program. The borrower or its agent shall obtain:

1. Adequate fire, extended coverage, and earthquake insurance as needed will be required on all buildings included as security for the loan or grant (see Guide Letter 1930–4 for requesting renewals). The amount of coverage will be not less than the amount specified on Form FmHA 426–1, "Valuation of Buildings."

2. Suitable Worker's Compensation Insurance on all its employees. (Worker's Compensation Insurance for employees of a management agent shall be paid out of the agent's management fee.)

3. Adequate liability insurance.

4. Flood insurance when the project is located in a designated flood hazard area.

5. A blanket insurance policy may be accepted from a borrower when blanket coverage is more cost effective for each project on a pro-rata basis, and the coverage limit for each project is identified or the total coverage limit is equal or greater than the sum of all projects and coverage is restricted exclusively to FmHA-financed MFH projects.

C. *Real Estate and Personal Property Taxes.* All borrowers will be required to pay their taxes before they become delinquent and provide FmHA with proof of payment (see Guide Letter 1930–7 to remind borrowers to pay taxes). An exception to the above may be made if the borrower has formally contested the amount of the property assessment and had escrowed the amount of taxes in question in a manner acceptable to the District Director.

XVI. *Automation of FmHA Forms and Formats:* The various forms and formats approved or prescribed for use by borrowers and their agents throughout this subpart may be prepared on automated systems when the following criteria is complied with:

A. *FmHA forms approved for official use by the Office of Management and Budget (OMB).*

1. The identical wording and nomenclature of an official form must be included in the automated version of the form, including the OMB approval number.

2. The function, i.e., logic or mathematical calculation, of an official form must be the same in an automated version of the form.

3. The name or logo of the source of an automated form must be visibly annotated on each output of the automated form.

4. Nominal spacing adjustment of the content of an official form on the automated format is permitted to accommodate limitations of automation software and hardware.

5. Output size must be 8½ inches x 11 inches.

B. *Unofficial FmHA Formats.* Items such as management plans, management agreements, waiting lists and FmHA guide letters should be automated to the extent possible. Content

and completion of the format must be developed according to FmHA guidelines for the item.

Exhibit B-1—Management Plan Requirements for FmHA Financed Multiple Family Housing Projects

FmHA requires adequate management of the MFH projects that it finances. Exhibit B-4 of this subpart will be used by a prospective management agent to provide a résumé of management background and/or experience. Exhibit B-5 of this subpart will be used by an owner who proposes to provide direct project management. A cooperative's board of directors will manage the business of the cooperative with the assistance of the adviser to the board. If the board is unable, in the adviser's opinion, to manage the cooperative after an adequate period of training, then FmHA will make the determination of whether the cooperative will hire professional management.

FmHA will use the Management Plan to evaluate the feasibility of project management. The Management Plan and any subsequent revisions must be signed by the borrower, and then approved and signed by the authorized FmHA official. No loan will be closed or construction started without a properly approved and signed Management Plan. A Management Plan will accurately reflect FmHA program requirements for the project and be responsive to each of the following areas.

1. *The role and responsibility of the owner and the relationship and delegations of authority to the management agent.* A Management Agreement must be provided where a management agent is to be used. If there is no management agent, the Management Plan should supply the equivalent information concerning the management staff assigned to day-to-day operation of the project even when the owner provides direct management.

a. If the management agent is closely associated with the owner in such a manner that creates a possible conflict of interest, is such a relationship fully explained and justified?

b. What are the supervisory relationships, and to whom are the persons responsible for the day-to-day operation of the project accountable?

c. Under what conditions must the management agent consult the owner before taking action?

d. Is the responsible person aware of FmHA guidelines covering family size and needs as they relate to unit size?

e. Who, in the owner's organization, is the key contact person for the management agent? What decisionmaking powers does this contact person have?

f. Are the respective responsibilities and duties (job description) of the owner and the managing agent listed? Are these responsibilities and duties clearly defined so as not to overlap? Are they clearly assigned? Are all basic responsibilities and duties covered?

2. *Personnel policy and staffing arrangements.*

a. Is all hiring in conformance with equal employment opportunity requirements?

b. What are the projected staffing needs for the project?

c. What are the lines of authority, responsibility, and accountability within the management entity?

d. What are the positions to be filled, the duties of each position, and the compensation?

e. What are the standards and plans for training and familiarizing employees with their job related responsibilities and applicable FmHA program requirements? Who will coordinate the training; where will it take place?

3. *Plans and procedures for marketing units, achieving and maintaining full occupancy, and meeting Affirmative Fair Housing Marketing Plan requirements (HUD Form 935.2).*

a. How and when will the units be advertised?

b. How will affirmative marketing practices be used? What outreach and marketing efforts will be made to reach those low-income and minority persons who traditionally would not be expected to apply for such housing without special outreach efforts?

c. What plans are being made to achieve and maintain the highest level of occupancy reasonably obtainable? Indicate any additional compensation or incentives that may be allowed management agents for early initial rent up. (If this area is not covered in the Management Plan, it will usually not be allowed by FmHA at a later date.)

d. What type of waiting list will be developed for the project? How and when will a waiting list be used? What type of information will be required before potentially eligible persons will be placed on the waiting lists? How will the waiting list be updated and where will it be maintained?

e. What are the procedures to allow eligible applicants to inspect the units prior to occupancy? What forms will be used to record unit condition and who will receive copies of the inspection forms?

f. What orientation services are to be provided tenants or members to acquaint them with the project and care of the units? Will printed project information be given to applicants?

g. Who is responsible for selecting the tenants or members? Is this selection subject to review? If so, under what conditions and by whom?

h. In projects receiving tax credits, what will the policy be toward renewal of leases with higher income tenants when borrowers are concerned with renting to low-income tenants, so as not to jeopardize their tax credits.

4. *Procedures for determining eligibility and for certifying and recertifying incomes.*

a. How are applications and other records relevant to this function kept?

b. Who will be responsible for carrying out this function?

c. Is the responsible person knowledgeable regarding certification and recertification requirements? If not, what provisions are being made to provide this person with the necessary training and follow-up testing for comprehension of the requirements?

d. Is the person knowledgeable of deadlines for receipt of tenant certifications in the District Office?

e. Who will be responsible for paying overage charges incurred due to late arrival of tenant certifications at the FmHA District Office?

f. Is the responsible person aware of FmHA guidelines covering family size and needs as they relate to unit size?

g. Is the responsible person aware of FmHA requirements regarding tenant or member eligibility, rejection, or placement on a waiting list?

h. Is the responsible person aware of FmHA requirements regarding projects subject to occupancy surcharge?

5. *Leasing and occupancy policies.*

a. Decribe the occupancy standards for the project including any conditions of flexibility to those standards.

b. What are the leasing or occupancy policies and procedures?

c. Is the person who is responsible, knowledgeable of FmHA required clauses? FmHA prohibited clauses?

d. What are the rules for occupancy? Who will receive them and where will they also be posted?

e. What procedures will be used to assure that persons who do not speak or read English will understand leases or occupancy agreements and established rules?

6. *Rent and occupancy charge collection policies and procedures.*

a. What are the collection policies and procedures? What types and amount of late charges will apply and under what circumstances will they be applied?

b. Where are rents or occupancy charges to be paid and who is responsible for collection and issuance of receipts?

c. Is there a provision for on-site collections? After hours depositing?

d. Are rent or occupancy charge payments adequately recorded and kept in a separate account?

e. What is the amount of any required security or membership fee deposits? What is the program for maintaining adequate accounting records of security or membership fee deposits? How will interest earned on these deposits be handled?

7. *Procedures for requesting and implementing a rent or occupancy charge change.*

a. What procedures will be followed in requesting FmHA approval of a rent or occupancy charge change? (Refer to *Exhibit C* of this subpart.)

b. At what time of year will such a request normally be made and what information will be presented to FmHA as justification?

c. How will the tenants or members be notified of a proposed change, and if approved, how will they be informed?

8. *Plans for carrying out an effective maintenance, repair and replacement program.*

a. Where will the project's as-built plans and specifications be located? Who will be responsible to update them when project modifications are made?

b. What procedures have been developed to service applicances and the mechanical

equipment? To check out all such equipment to be sure that it is properly installed and operating prior to releasing units for occupancy?

c. What is the plan and source of funds for replacement of appliances, equipment or building components, i.e. occasional replacement vs. large scale replacement?

d. What are the procedures for inspecting and carrying out maintenance activities in units prior to a move-out? Prior to re-occupying this unit?

e. What is the schedule for interior and exterior painting and redecorating?

f. How will garbage and trash removal be handled?

g. How will major repairs be handled?

h. How will grounds upkeep and maintenance be carried out?

i. What is the schedule for cleaning entryways, halls, and other common areas?

j. How will tenants or members be instructed to report major and/or minor maintenance repair needs?

k. What security provision will be made for the protection of project residents such as smoke alarms, fire extinguishers, outside lighting, ice removal, etc.?

l. What is the plan for preventive maintenance in the overall project? Who will monitor and implement the plan?

m. How will purchase orders and payments be handled?

n. What will be the process to plan and budget for long-term replacement items?

o. In migrant or seasonally occupied LH, what will be the opening and closing dates and the maintenance program for each event?

9. *Plans and procedures for providing supplemental services.*

a. What types of supplemental services such as laundry and vending machines will be provided to benefit occupants?

b. Will this equipment be owned and operated by the owner or a consignee (vendor)?

c. Describe the safekeeping and recording practices of any cash collections from use of the equipment.

d. Who will be responsible for maintaining the equipment and stocking any vending machines.

e. If a consignee will operate the equipment, describe the general terms of the consignment contract.

10. *Plans for accounting, recordkeeping and meeting FmHA reporting requirements.*

a. What type of project accounting methods and records will be used and how will they be maintained? Who will prepare and maintain them?

b. Describe the bookkeeping chart of accounts and bank accounts that will be maintained to comply with FmHA requirements.

c. Who will be responsible for the preparation and submission of the quarterly and annual reports required by FmHA?

d. Who, other than the person or firm who prepares the quarterly and/or annual reports, will prepare the audit when one is required?

e. Discuss the proposed tenant or member record maintenance system including retention of records. Who will handle and maintain the records?

f. Where will records subject to FmHA review be kept? Who will FmHA contact to review the records?

11. *Energy conservation measures and practices.*

a. What energy conservation practices will the tenants or members directly control? Which utilities will be affected?

b. What energy conservation practices will the management directly control? Which utilities will be affected?

c. Explain the proposed energy conservation practices in connection with utilities paid by the management.

d. Describe proposed actions to stimulate energy conservation by the tenants or members.

e. How will tenants or members be oriented to energy conservation measures and practices?

f. Explain when energy conservation measures identified in the energy audit will be carried out. Who will carry them out? When?

12. *Plans for tenant participation in RRH project operations and tenant's relationship with management.*

a. How will tenants be oriented to the project?

b. What are the plans for a tenant organization?

c. Describe how management and staff will work with or assist tenants and/or tenant organizations.

d. Describe the procedure for identifying and assisting tenants who need special services not provided in the project to transition them to alternative housing such as a group, congregate or nursing care facility.

e. Is the responsible person knowledgeable of FmHA tenant grievances and appeals procedures? Where will the procedure be kept? Who will keep it and see that it is posted?

13. *Plans for member participation in RCH project operations.*

a. Who will explain to the members the types of committees the cooperative will be using?

b. What will the cooperative do to induce member participation on committees?

c. How will the board members participate with the committee?

d. Is the responsible person knowledgeable of FmHA tenant grievance and appeals procedures? Where will the procedure be kept? Who will keep it and see that it is posted?

14. *Plan for carrying out management training programs.*

a. What type of commitment will management or each board member assume in regard to participating in on-going rental or cooperative housing educational programs?

b. Who will be the person responsible for coordinating the training programs?

c. Where will the training take place?

d. What action should be taken by the board if all board members do not participate in RCH training?

e. What responsibility will the board assume in making sure the RCH membership as a whole understands its roles and functions in the cooperative?

f. How will the nondiscrimination provisions of the civil rights legislation be discussed? Who will provide this segment of the training?

15. *Termination of Leases or Occupancy Agreements and Eviction.*

a. Who is responsible for knowing and administering State and local laws and FmHA's requirements regarding termination of leases or occupancy agreements and evictions?

b. Who is responsible for knowing and administering State and local laws and FmHA's requirements regarding notification that must be given to a tenant or member when termination of lease, occupancy agreement and eviction is proposed?

16. *Security servicing.*

a. Who is responsible for knowing and complying with FmHA requirements for fidelity coverage and acquiring such coverage?

b. Who is responsible for knowing and complying with FmHA's insurance coverage requirements and acquiring such coverage?

17. *Management agreement.* Attach a copy of the proposed form of Management Agreement that will be used if the project will not be owner-managed. See Exhibit B-2 for requirements for management agreements.

18. *RCH Board of Director/Adviser Relationship.* Discuss the relationship of the adviser and its effect on decisions made by the board.

19. *Management compensation.*

a. What amount of management fee will be paid monthly? Describe the duties and responsibilities of the management agent that are covered by the management fee? What duties and responsibilities are not included?

b. How will the management fee be calculated? As a flat rate or as a percentage of actual rents or gross rents collected?

c. If management is provided directly by the owner, describe the amount of management fee, how it will be determined, and how it will be paid?

d. In the case of a cooperative, describe the amount of compensation to be paid to the adviser by the board.

20. *On-Site management.*

a. Who (owner, resident manager, caretaker, board) will perform on-site management duties and responsibilities?

b. Describe the duties and responsibilities of the on-site management staff.

c. Will the site manager live in the project in a rent-free unit or pay rent?

21. *Validity of the Management Plan.* The plan must provide space at the end for the following:

a. Date, title, and signature of borrower or borrower's authorized representative.

b. Date, title, and signature of the FmHA official approving the Plan.

Exhibit B-2—Requirements for Management Agreements

A completed and executed management agreement must be reviewed and approved by Farmers Home Administration (FmHA) whenever a management agent is to be used. A management agreement must be submitted to FmHA for review as part of a project loan docket, whenever there is a change of management agents or ownership, or when

revision of an existing agreement is necessary or required.

1. A written management agreement is required for any project when the owner retains a management agent but is not required when the project is managed by the owner as described in paragraph V.D.2. of Exhibit B of this subpart. However, a written management plan is required for all projects. Although the adviser to a cooperative board of directors is not the same type of agent as those who are now managing rental projects, a written agreement between the board and the adviser is required which sets forth their relationship and what the adviser is expected to do for the cooperative. Exhibits F, F-1, and G of subpart E of part 1944 outlines the functions and responsibilities of an adviser. The agreement may follow the content of Exhibit B-3 of this subpart.

2. The management agreement shall conform to FmHA requirements. The owner may delegate to the agent any management duties which are not required to be performed by the owner. However, the owner remains totally responsible to FmHA for all aspects of management.

3. The management agreement shall be consistent with the management plan for the project. The management plan is the primary management charter, constituting a comprehensive description of the detailed policies and procedures to be followed in managing the project. The function of the management agreement is incidental to implementation of the management plan. The agreement must be defined in precise language; the agreement need not repeat all of the detailed procedures contained in the management plan.

4. The management agreement shall contain the management agent's organization and staffing structure, management controls, and outside ownership interests. When evidence exists that the management agent is conducting transactions with firms that may have an identity of interest, the borrower shall refer such cases to FmHA for review of the reasonableness of charges to the project and approval of such procurement arrangements. The borrower shall provide FmHA a list of competitive costs to assist in making this determination.

5. The management agreement should follow the guidelines of Exhibit B-3 of this subpart. Each management agreement shall be realistically tailored to the specific conditions of the particular project. The site, design, and size of the project fiscal constraints; market conditions; social factors; local law and business practices are among the elements which may require variations in the management agreement. Consideration must also be given to the capabilities and legitimate desires of the owner and agent.

Exhibit B-3—Management Agreement for FmHA Multiple Family Housing Projects

This Agreement is made this ________ day of ________, 19____, between ________ (the "Owner"), and ________ (the "Agent") under the terms and conditions set forth herein.

I. *General.*

A. *Appointment and Acceptance.* The Owner appoints the Agent as exclusive agent for the management of the property described in Section I. B. of this Agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this Agreement.

B. *Project Description.* The property to be managed by the Agent under this Agreement (the "Project") is a housing development consisting of the land, buildings, and other improvements which make up Project No. ________. The Project is further described as follows:

Name ________
Location:
City: ________
County: ________
State: ________
No. of dwelling units ________
Type of units ________
(Family, Elderly, Mixed, Congregate)

C. *Definitions.* As used in this Agreement:

1. *FmHA* means the Farmers Home Administration, including any successor agencies.

2. *Principal Parties* mean the Owner and the Agent.

D. *FmHA Requirements.* In performing its duties under this Management Agreement, the Agent will comply with all relevant requirements of FmHA. FmHA requirements include preparation of forms and reports in the format of prescribed FmHA forms and exhibits.

E. *Basic Information.* As soon as possible, the Owner will furnish the Agent with a complete set of "as built" plans and specifications and copies of all guarantees and warranties relevant to construction, fixtures, and equipment. With the aid of this information and inspection by competent personnel, the Agent will become thoroughly familiar with the character, location, construction, layout, plan and operation of the project, and especially with the physical plant.

F. *Compliance with Governmental Orders.* The Agent will take such action as may be necessary to comply promptly with any and all governmental orders or other requirements affecting the project, whether imposed by federal, state, county or municipal authority, subject, however, to the limitation stated in paragraph IV I of this exhibit with respect to repairs. Nevertheless, the Agent shall take no action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Agent will notify the Owner in writing of all notices of such orders or other requirements, within seventy-two (72) hours from the time of their receipt.

G. *Nondiscrimination.* In the performance of its obligations under this Agreement, the Agent will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, religion, sex, age, familial status, national origin, or handicap (applicants must have capacity to execute a legal contract) including title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241), title VIII of the Civil Rights Act of 1968 as amended by Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and the Fair Housing Amendments of 1988, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to the Farmers Home Administration (FmHA).

H. *Fidelity Coverage.* The Agent agrees to furnish, at its own expense, fidelity coverage to the owner, with copy to FmHA, on the employees of the Agent, including site personnel, who are entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable property other than money or securities. The amount of ________ dollars ($________) according to the scale of coverage found in paragraph XV of Exhibit B of this Instruction (7 CFR part 1930, subpart C, exhibit B). The Agent will obtain coverage from a company licensed to provide coverage in the project locality. Coverage will be in force to coincide with the assumption of fiscal responsibility by the Agent until that responsibility is relinquished. Endorsement listing FmHA projects separate from other projects or operations will be obtained and made part of the coverage policy or bond. The other terms and conditions of the coverage, and the surety thereon, will be subject to the requirements and approval of the owner.

I. *Bids, Discounts, Rebates, etc.* With prior approval of the owner, the Agent will obtain contracts, materials, supplies, utilities, and services on the most advantageous terms to the Project, and is authorized to solicit bids, either formal or informal, for those items which can be obtained from more than one source. The Agent will secure and credit to the Owner all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.

II. *Management Plan.*

A. *Description.* Attached is a copy of the management plan for the project, which provides a comprehensive and detailed description of the policies and procedures to be followed in the management of the project.

B. *Relationship with Management Plan.* The Agent shall conduct his management activities in accordance with the policies and procedures set forth in the management plan. In addition, the Agent will also carry out the tasks and responsibilities set forth in paragraph IV of this Agreement.

III. *Budget.*

A. *Preparation.* The Agent shall prepare an original project budget for submission to the owner and FmHA for approval. For each subsequent fiscal year the Agent shall prepare a new budget.

B. *Budget Categories.* The budget shall be prepared using the format and categories of FmHA Form 1930-7, "Multiple Family Housing Project Budget."

IV. Agent's Obligations.

A. *Management Input During and After FmHA Processing.* The Agent will advise and assist the Owner with respect to management planning and input during FmHA loan processing. The Agent's specific tasks will be:

1. Participation in any conference with FmHA officials involving project management.

2. Preparation and submission of Form FmHA 1930-6, "Monthly Report," throughout the period from initial occupancy after FmHA loan closing until such time as no longer

required by FmHA. If the management is authorized to sign the reports for the owner, a copy of the signed report as submitted to FmHA will be provided to the owner.

3. Participation in the on-site final inspection of the project, required by FmHA prior to initial occupancy.

4. Continuing review of the management plan, for the purpose of keeping the Owner advised of necessary or desirable changes.

B. *Liasison with Architect and General Contractor.* At the direction of the owner during the planning and construction phases, the Agent will maintain direct liaison with the architect and general contractor, in order to:

1. Coordinate management concerns with the design and construction of the Project,

2. To facilitate completion of any corrective work, and

3. To facilitate the Agent's responsibilities for arranging utilities and services pursuant to paragraph IV. J. of this Agreement. The Agent will keep the Owner advised of all significant matters of this nature.

C. *Marketing.* The Agent will market the rental units according to the management plan, observe all requirements of the Affirmative Fair Housing Marketing Plan, and maintain records of the marketing activity for compliance review purposes.

D. *Rentals.* The Agent will offer for rent and will rent the dwelling units in the Project. The following provisions will apply:

1. The Agent will make preparations for initial rent-up, as described in the management plan.

2. The Agent will follow the tenant selection policy described in the management plan.

3. The Agent will show the premises and all available units to all prospective tenants without regard to race, national origin, sex, religion, familial status, handicap or age.

4. The Agent will take and process applications for rentals. If an application is rejected, the Agent will inform the applicant in writing of the reason for rejection. The rejected application, with the reason for rejection noted thereon, will be kept on file until a compliance review has been conducted. If the rejection is because of information obtained from a Credit Bureau, the source of the report must be revealed to the applicant according to the Fair Credit Reporting Act. A current list of prospective tenants will be maintained.

5. The Agent will prepare all dwelling leases, parking permits, and will execute the same in its name, identified thereon as Agent for the Owner. The terms of all leases will comply with the relevant provisions of FmHA regulations. Dwelling leases will be in a form approved by the Owner and FmHA.

6. The Owner will furnish the Agent with rent and income report forms required by FmHA, showing rents as appropriate for dwelling units, other charges for facilities and services, income data relevant to determinations of tenant eligibility and tenant rents. In no event will the rents and other charges be exceeded.

7. The Agent will counsel all prospective tenants regarding eligibility and will prepare and verify eligibility certifications and recertifications in accordance with FmHA requirements

E. *Reports.* The Agent will furnish information (including occupancy reports) as may be requested by the Owner, FmHA and/or the Office of Inspector General from time to time with respect to the project's financial, physical, or operational condition. The Agent will also prepare and submit:

Form FmHA 1944–8 "Tenant Certification".
Form FmHA 1944–29 "Project Worksheet for Interest Credit and Rental Assistance".
Form FmHA 1930–7 "Multiple Family Housing Project Budget".
Form FmHA 1930–8 "Year End Report and Analysis For Fiscal Year Ending"

The Agent will assist the owner in completing all additional forms and data prescribed by FmHA affecting the operation and maintenance of the project.

F. *Collection of Rents, Security Deposits and Other Receipts.* The Agent will collect when due all rents, charges, and other amounts receivable on the Owner's account in connection with the management and operation of the project. Such receipts will be deposited immediately in the project's General Operating Account with __________ (name of bank or such other financial institution designated by the Owner), whose deposits are insured by an agency of the Federal Government. The Agent will collect, deposit, and disburse security deposits, if required, in compliance with any State or local laws governing tenant security deposits. Security deposits will be deposited by the Agent in a separate account, at a Federally insured institution. This account will be carried in the owner's name and designated of record as "(Name of Project) Security Deposit Account."

G. *Accounting System.* The Agent must develop a systematic method to record the business transactions of the project that appropriately reflects the complexity of project operations. The Agent may be required to implement and use a bookkeeping and accounting system acceptable to FmHA. The accounts described in paragraph V. of this agreement, as a minimum, will be established and regularly maintained by the Agent.

H. *Enforcement of Leases.* The Agent will ensure full compliance by each tenant with the terms of the lease. Voluntary compliance will be emphasized. The Agent, using the services of local social service agencies when available, will counsel tenants and make referrals to community agencies in cases of financial hardship or other circumstances deemed appropriate by the Agent. Involuntary termination of tenancies should be avoided to the maximum extent consistent with sound management of the Project. Nevertheless, and subject to the relevant procedures prescribed in the Management Plan, the Agent may initiate action to terminate any tenancy when, in the Agent's judgment, there is material noncompliance with the lease or other good cause as prescribed by FmHA regulations for such termination. The tenant must be properly notified of his/her right to appeal the proposed action according to FmHA regulations. Subject to the Owner's approval, attorney's fees, and other necessary costs incurred in connection with such actions will be paid out of the General Operating Account as project expenses.

I. *Maintenance and Repair.* The Agent will maintain and repair the project in accordance with the management plan and local codes, and keep it in a condition acceptable to the Owner and FmHA at all times. This will include, but is not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, energy conservation measures and practices; and such other maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to those contained herein.

Incidental thereto, the following provisions will apply:

1. Special attention will be given to preventive maintenance, and to the greatest extent feasible, the services of regular maintenance employees will be used.

2. Subject to the Owner's prior written approval, the Agent will contract with qualified independent contractors for the maintenance and repair of air-conditioning, heating systems and elevators, and for extraordinary repairs beyond the capability of regular maintenance employees.

3. The Agent will systematically receive and promptly investigate all service requests from tenants, take such action as may be justified, and keep records of the same. Emergency requests will be received and serviced on a twenty-four (24) hour basis. Serious complaints will be reported to the Owner after investigation.

4. The Agent is authorized to purchase all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair with prior written approval of the owner.

5. Notwithstanding any of the foregoing provisions, the prior written approval of the Owner will be required for any expenditure which exceeds __________ Dollars ($__________) in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Project. This limitation is not applicable for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any necessary service to the Project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.

6. The Agent will advise the Owner of any cost-effective and adaptable energy conservation measures or practices that should be used in the project. The Agent will encourage their use and will assist the Owner during any installation of these measures or practices.

J. *Utilities and Services.* Subject to the Owner's prior written approval, and according to the management plan, the Agent will make arrangements for water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service.

K. *Insurance.* The Owner will inform the Agent of insurance to be carried with respect to the project and its operations, and the Agent will cause such insurance to be placed and kept in effect at all times. The Agent will pay premiums out of the General Operating Account, and premiums will be treated as operating expenses. All insurance will be

placed with companies, on conditions, in amounts, and with beneficial interests appearing thereon as shall be acceptable to the Owner at the FmHA provided that the same will include public liability coverage, with the Agent designated as one of the insured, in amounts acceptable to the Agent as well as the Owner and FmHA. The Agent will investigate and furnish the Owner with full reports on all accidents, claims, and potential claims for damage relating to the project, and will cooperate with the owner's insurers in connection therewith.

L. *Taxes, Fees and Assessments.* The Agent shall pay all taxes, assessments and government fees for the Owner promptly when due and payable. The Agent shall also evaluate local property taxes to insure they bear a fair relationship to the project value and appeal such taxes when appropriate.

M. *Employees.* The management plan prescribes the number, qualifications, and duties of the personnel to be regularly employed in the direct management of the project, including a Site Manager, maintenance, bookkeeping, clerical and other managerial employees. All such personnel will be employees of the Agent and not the Owner, and will be hired, supervised, and discharged by the Agent. Site employee salaries will be paid by the Agent from the Owner's General Operating Account. This account will also reimburse the agent for workers compensation, social security taxes, and other taxes normally paid by the employer dealing with wages. Agent employees who work off-site or in the Agent's office will be paid directly by the Agent out of the management fee paid by the project.

V. *Project Accounts.*

A. *General Operating Account.* This account records all project income and disbursements. Excess project cash held in this account may be combined with other project funds described below in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for individual project accounts. This will usually be a checking account which must be maintained in a financial institution insured by the Federal Government. The Owner will have deposited any cash portion of the required initial operating capital into the General Operating Account by the time of loan closing or when interim funds were obtained, whichever occurs first. After two, but before five full (12 month) borrower fiscal years of project operation, the borrower may request (in writing) the FmHA State Director's authorization to make a onetime withdrawal of the initial operating capital, or a part of it. The withdrawal can be in the form of cash, release or reduction in the letter of credit, or combination of both. The total withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that: The project has achieved at least a 95 percent occupancy level at time of the withdrawal request; the withdrawal will not affect the financial integrity of the project; after withdrawal, approximately 10 percent of projected yearly operation and maintenance expenses should remain in the general operating account in excess of current liabilities then outstanding; the owner must demonstrate that all prudent maintenance is being planned and performed and payment of necessary project expenses are not being deferred; after withdrawal, approximately 10 percent of projected operation and maintenance expenses should remain in the General Operating Account in excess of current liabilities then outstanding; the State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next year of operation except that a rent increase needed because of normal increased budget expenses unrelated to the withdrawal may be approved; and the State Director has reviewed and approved any required borrower reports before the Initial Operating Capital is withdrawn. (This may mean that actual withdrawal will need to occur early in the sixth year.)

1. *Deposits.* All income and revenue from the housing project shall, upon receipt, immediately be deposited in the General Operating Account. This will include rent receipts or occupancy charges, housing subsidy payments, laundry revenue, or any other project income. The borrower and Agent may also, at their discretion at any time, deposit therein other funds which are also to be used for purposes authorized by this section including transfer from the Reserve Account. Housing assistance payments received from the Department of Housing and Urban Development (HUD) and FmHA rental assistance payments shall be deemed to be revenue derived from the operation of the project. All funds in the General Operating Account will be used only as authorized in this section and until so used, will be held by the Agent in trust for the Government as security for the project obligations.

2. *Disbursements.* Not later than the 15th of each month, out of the General Operating Account, the Agent shall pay or fund the actual, reasonable and necessary monthly project expenses. Current expenses may include the initial purchase and installation of furnishings and equipment with any funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. (However, nonprofit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in subpart E of part 1944 of this chapter.) Other authorized disbursements are FmHA approved installments of debt service, real estate tax and insurance escrow, reserve, and at the end of the fiscal operating year, return on investment as provided in Section C of this exhibit. Any balance remaining in the General Operating Account, except as authorized above, may be retained or transferred to the Reserve Account.

B. *Real Estate Tax and Insurance Escrow Account.* When applicable, funds recorded in this account may be deposited in an interest bearing account at a Federally insured financial institution. Each month after the payment of actual, reasonable, and necessary current operating and maintenance expenses, there shall be transferred from the General Operating Account to the Real Estate Tax and Insurance Escrow Account an amount equal to one-twelfth of the total anticipated real estate tax and insurance payments for the year. Any interest earned shall accrue to the project. Funds in the Real Estate Tax and Insurance Escrow Account shall be used only as authorized by this section and until so used, shall be held by the Agent in trust for the Government as security for the loan obligations.

C. *Reserve Account.* Monthly deposits of funds recorded in this project account should preferably be held in an interest bearing account or accounts at a Federally insured financial institution. Immediately after paying each installment for the orderly retirement of the FmHA loan, as provided in the borrower's promissory note, required reserve installments shall be transferred to the Reserve Account at least at the monthly rate stipulated by the borrower's loan agreement or resolution. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution or amendment to said agreement or resolution. Monthly transfers shall be resumed the month following withdrawals that decrease the Reserve Account balance below its required level until it is restored to the specified total minimum sum. Funds in the Reserve Account shall be used only for authorized purposes as described below and, until so used, shall be held by the Agent in trust as security for the loan obligations. Reserve Account funds not immediately needed for authorized purposes may be invested in saving certificates insured by a Federal agency, or invested in readily marketable obligations of the United States Treasury Department, the earnings on which shall accrue to the project. Interest earnings may be used as project income. An amendment may be made to increase the reserve, to cover the cost of scheduled replacement of depreciable equipment and facility items in addition to general reserve requirements. Any deposits and withdrawals from the Reserve Account should be recorded on a suitable format for tracking and reconciliation of the account. Any amount in the reserve account which exceeds the total sum specified in the loan agreement or resolution may be transferred to the General Operating Account for the authorized purposes, only when it is agreed between the owner and the FmHA to be in excess of the requirement and there is a specific need for the excess funds. However, the FmHA District Director may direct the excess sum to be retained in the Reserve Account when determined necessary to protect the Government's security interest including a "trust fund" to provide future subsidy when current subsidy agreement(s) expire. With prior consent of the Government, funds in the Reserve Account may be used by the owner or it's designee for the following purposes:

1. To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for the purpose.

2. To pay costs of repairs or replacements to the housing, furnishings or equipment caused by catastrophe or long-range depreciation which are not current expenses. Withdrawal for approved purposes will be

approved in advance during the annual budget approval process. Annual budgets will include realistic routine expense levels to minimize use of the reserve for routine expenses (operating deficits).

3. To make improvements to the housing project without creating new living units. Also, to make units and common areas accessible to physically impaired individuals in the absence of such features in the project.

4. For other purposes desired by the owner, which in the judgment of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the orderly collectibility of the loan, without jeopardizing the loan or impairing the adequacy of the security.

5. To pay a return on investment at the end of the owner's project operating year, provided that after such disbursement, the amount in the Reserve Account is on schedule or will be not less than that required by the loan agreement or resolution to be accumulated by that time minus any authorized withdrawals including any reductions to the annual requirement authorized by FmHA as part of a servicing or workout plan, and the amount in the Reserve Account will likely not fall below that required to be accumulated during the next 12 months:

(a) If owner is operating on a limited profit basis, to pay a return on the owner's initial investment as identified in the loan agreement or resolution.

(b) If owner is operating on a full profit basis, to pay a return as specified in the owner's loan agreement or resolution.

D. Tenant Security Deposit Account (When Applicable). Upon receipt, all tenant security deposits funds collected shall be deposited in a separate account at a Federally insured financial institution, and shall be handled according to any State or local laws governing tenant security deposits. All tenant security deposit funds collected shall be recorded in a bookkeeping account that is separate from the project bookkeeping accounts. Funds in the tenant Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management plan. They shall be held by the Agent in trust for the respective tenants until so used. Any amount in the Tenant Security Deposit Account which is retained by the Agent as a result of lease violations, shall be transferred to the General Operating Account and treated as income of the housing. In no case will interest earned on security deposits accrue to the Agent or the owner. Any interest earned but not returned to the tenants will accrue to the project's General Operating Account for disposition as outlined in the management plan.

VI. *Agents Compensation, Tenure and Identification.*

A. *Agent's Compensation.* The Agent will be compensated for its services including overall management under this Agreement by monthly fees, to be paid from the General Operating Account and treated as a project operation and maintenance expenses. Such fees will be payable on the first day of each month for the preceding month. Each monthly fee will be in an amount computed as follows:

(The following are preferred methods in ranked order. Any other method of compensation will be fully described and inserted in this section.) The costs incurred by the Agent for performing the specified services listed in this agreement shall be allocated to the owner and Agent as outlined in the Agreement, management plan, and approved project budget.

1. $ /occupied unit on the first of a month.

2. % of cash rent collections. (Plan I and full profit)

3. % of basic rents collected. (Plan II)

Maximum annual compensation under this agreement and the approved project budget shall be $__________/year.

B. *Term of Agreement.* This Agreement shall be in effect for a period of not more than two years, beginning on the ________ day of __________, 19 ______, subject, however to the following conditions:

1. This Agreement will not be binding upon the Principal Parties until approved by FmHA.

2. This Agreement may be terminated by the mutual consent of the Principal Parties as of the end of any calendar month, provided that at least thirty (30) days advance written notice thereof with reasons given is submitted to FmHA.

3. In the event that a petition in bankruptcy is filed by or against either of the Principal Parties, or in the event that either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement without notice to the other, provided that prompt written notice with reasons given for such termination is submitted to FmHA.

4. It is expressly understood and agreed by and between the Principal Parties that the State Director shall have the right to terminate this Agreement at the end of any calendar month, with cause, or without cause in cases of owner default, on thirty (30) days advance written notice to each of the Principal Parties, except that in the event of a default by the Owner under its security instruments, the State Director may terminate this Agreement immediately upon the issuance of a notice of cancellation to each of the Principal Parties. It is further understood and agreed that no liability will attach to either of the Principal Parties in the event of such termination.

5. Upon termination of this Agreement the Agent will submit to the Owner all project books and records and any financial statements required by the FmHA. After the Principal Parties have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Agent security, in form and principal amount satisfactory to the Agent, against any obligations or liabilities which the Agent may properly have incurred on behalf of the Owner hereunder.

C. *Agent's Indemnification.* Notwithstanding any provision of this Agreement or any obligation of Agent hereunder, it is understood and agreed: (a) That Owner has assumed and will maintain its responsibility and obligation throughout the term of this Agreement for the finances and the financial stability of the project; and (b) that Agent shall have no obligation, responsibility or liability to fund authorized project costs, expenses, or accounts other than those funds generated by the project itself or provided to the project or to Agent by Owner. In accordance with the foregoing, Owner agrees that Agent shall have the right at all times to secure payment of its compensation, as provided for under paragraph VI A of this Agreement, from the Operating and Maintenance Account, immediately when such compensation is due and without regard to other project obligations or expenses provided the Agent has satisfactorily discharge all duties and responsibilities under this Agreement. Moreover, Owner hereby indemnifies Agent and agrees to hold it harmless with respect to project costs, expenses, accounts, liabilities and obligations during the term of this Agreement and further agrees to guarantee to Agent the payment of its compensation under paragraph VI A of this Agreement during the term of this Agreement to the extent that the project's Operating and Maintenance Account is insufficiently funded for this purpose. Failure of Owner at any time to abide by and to fulfill the foregoing shall be a breach of this Agreement entitling Agent to obtain from Owner, upon demand, full payment of all compensation owed to Agent through the date of such breach and entitling Agent, at its option, to terminate this Agreement forthwith.

VII. *Interpretative Provisions.*

A. This Agreement constitutes the entire agreement between the Owner and the Agent with respect to the management and operation of the project. No change will be valid unless made by supplemental written agreement approved by FmHA.

B. This Agreement has been executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

C. This Agreement is NOT in full force and effect unless and until concurred by FmHA.

D. At all times, this Agreement will be subject and subordinate to all rights of the FmHA, and will work to the benefit of and constitute a binding obligation upon the Principal Parties and their respective successors and assigns. To the extent that this Agreement confers rights upon the Consenting Parties, it will be deemed to work to their benefit, but without liability to either, in the same manner and work with the same effect as though the Consenting Parties were primary parties to the Agreement.

IN WITNESS WHEREOF, the Principal Parties [by their duly authorized officers] have executed this Agreement on the date first above written.

Owner: ____________________

By: ____________________

Title: ____________________

Witness:

____

Agent: ____________________

By: ____________________

Title: ____________________

Witness:

____

As lender or insurer of funds to defray certain costs of the project and without liability for any payments hereunder, the Farmers Home Administration hereby concurs with this Agreement.

Farmers Home Administration

By: ______

Title: ______

Date: ______

Attachments: Management Plan Loan Resolution or Agreement.

Exhibit B-4—Questionnaire for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project

Note: This questionnaire outline will be used by borrowers to evaluate the capacity of prospective management agents to provide management in a new or existing multiple family housing project.

Please provide a written signed statement for FmHA and the owner giving your answers in the same order, to the information requested. Please be brief and concise in your answers and indicate if a certain question is not applicable in your particular case. Your statement will be used by FmHA and the owner to evaluate your capacity to successfully manage the project.

1. Provide your name, address, name of project, location of project, and the name of the owner.
2. Provide information about projects previously or presently managed by the management entity and its employees, including information relative to default history, mortgage relief history, and foreclosure history along with an explanation of the circumstances that led to such actions.
3. Describe your firm including number of main office staff employed in the following capacities: supervisory, clerical, maintenance, and social services.
4. Explain where project records will be kept.
5. Describe your plan for project on-site staff including their duties and work frequency.
6. Give the distance in miles from your home office and the nearest branch office, if applicable, to the project.
7. Describe the accounting system, rent-up procedure, rent-collection policy, and preventive maintenance program including energy conservation you intend to use in the proposed project.
8. Describe your relationship with the owner and your knowledge of the intended degree of owner involvement in operating the project.
9. Describe the frequency and type of direct supervision to be given the site manager.
10. Give a description of your financial condition, stability and financial resources.
11. Describe your plan to implement applicable FmHA accounting requirements for the project. If you have managed this type of project before, cite those projects as an indication of your knowledge of such requirements. If you have not managed such projects, indicate your understanding of what needs to be done to fulfill such requirements.
12. Please also describe:

a. Your plans for handling tenant grievances and appeals, providing tenant counselling, and using outside social service agencies.

b. The extent of your knowledge of FmHA requirements for tenant eligibility, tenant certifications and recertifications.

c. Your plans to train your personnel in the management of FmHA multifamily housing, including training on the nondiscrimination provisions of the civil rights laws.

13. Provide evidence of fidelity coverage capacity.
14. Include where appropriate the following statement: "I hereby certify that there is no close association between the management agent and the owner of the above described project in such manner that creates a possible conflict of interest." If such an association exists (e.g., the management agent is a member, stockholder, partner, principal, etc., of the borrower organization, familial relationship) explain the relationship in detail.

Exhibit B-5—Questionnaire for Owner who Proposes Owner-Management of a Multiple Family Rental or Labor Housing Project

Note: This questionnaire outline will be used by owners who propose to initially or subsequently provide owner-management, except for individual labor housing owners, in developing a resume of their capacity to provide management in a new or existing multiple family housing project.

Please provide a written single statement for FmHA responding in the same order to the items that follow. Please be brief and concise in your answers and indicate if a certain item is not applicable in your case. Your statement will be used by FmHA to evaluate your capacity to operate the project successfully. For projects owned by a partnership, the following information should be provided for the partnership entity as well as for each general partner.

1. Provide name of owner, address, and the name and location of project. State the number of rental units in the proposal.
2. Provide information about your previous projects, regardless of the source of financing, including mortgage relief and foreclosure history along with an explanation of the circumstances that led to such actions.
3. List names and addresses of management agents who manage your previously or presently owned projects, if any.
4. Describe your understanding of the responsibilities connected with owning and managing a multifamily project under FmHA.
5. Outline your experience and capabilities in providing housing for low- and moderate-income tenants.
6. Describe your intended tenure of ownership and the extent of personal involvement in operating and managing this project.
7. Describe your intentions and capacity to meet negative cash flow situations.
8. Describe your plans for the management and maintenance of the proposed project. If you intend to manage the project, describe your own management capacity by answering applicable portions of the "Questionnaire for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project," Exhibit B-4 of this subpart.

EXHIBIT B-6.—MONTHLY AND QUARTERLY REPORTS

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
Project Worksheet for Interest Credit and Rental Assistance (Form FmHA 1944-29).	Monthly payment date...	Borrower	All Borrowers Individuals and Organizations.	Copy kept by borrowers; original goes to the FmHA District Office with payments.	Instructions for preparation are in the FMI for Form FmHA 1944-29.
Quarterly Report (Form FmHA 1930-7).	Submit to FmHA District Office by the 10th of month following each quarter; due in State Office before the 15th.	Borrower	All Borrowers.....	Copy kept by borrower. Original and one copy go the FmHA District Office; District Office to forward original to State Office. *State Office makes copy and signed original returned to District Office.	Reports will continue until written notice for discontinuance is received from FmHA District Director. Instructions for preparation are in the FMI for form FmHA 1930-7.

*Signed copy goes to State Office when District Office staff have received delegated approval authority.

EXHIBIT B-7.—ANNUAL REPORTS

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
Verification of Account (in lieu of Audit Report) according to this Subpart.	Within 60 days following close of borrower's fiscal year.	Generally by a qualified individual, independent of the borrower.	Borrowers with 24 or less units.	Copy kept by Borrower. Original to FmHA District Office; District Office makes one copy for State Office.	Additional Instructions for non-profit borrowers are in Paragraph XIII B 2c of this Exhibit. Can be submitted separate form Annual Report items.
Multiple Family Housing Project Budget Form FmHA 1930-7.	Between 30 days prior and 30 days following close of borrower's fiscal year. (60 day period).	Borrower	All Borrowers	Copy kept by Borrower. Original and one copy to FmHA District Office; original with comments to State Office by District Office. *State Office makes copy (with S.O. comments) and returns original to District Office.	Instructions for preparation are in the FMI for Form FmHA 1930-7
Housing Allowance for Utilities and other Public Services (Exhibit A-6 to FmHA Instruction 1944-E).	Must be submitted with Form FmHA 1930-7.	Borrower	Plan II and Rental Assistance Borrowers where tenant pays any utilities.	Copy kept by borrower. Original and one copy to FmHA District Office with backup data; District Office returns original to Borrower after State Office approval*	Instruction for preparation are in FmHA Instruction 1944-E.
Year end Report and Analysis for Fiscal Year ending ______ Form FmHA 1930-8.	Between 30 days prior and 30 days following close of borrower's fiscal year. (60 day period).	Borrower	All Borrowers Individuals & Organizations.	Copy kept by borrower. Original and one copy to FmHA District Office. District Office sends original to State Office. *State Office makes cop and returns signed original to District Office.	Instruction for preparation in the FMI for Form FmHA 1930-8.
Minutes of Annual Meeting (When applicable).	Between 30 days prior and 30 days following close of borrower's fiscal year.	Borrower	All Organizational Borrowers with governing bodies, and all corporations.	Two copies to FmHA District Office; one to be sent by District Office to State Office.	
Energy Audit	Between 30 days prior and 30 days following close of borrower's fiscal year. (60 day period).	Borrower	All Borrowers Individuals and Organizations.	One copy to District Office	FmHA Instruction 1930-C, Exhibit D.
Note: All preceding items will be submitted together					
Audit Report	Generally within 60 days following close of borrower's fiscal year.	Borrower's CPA or LPA in accordance with booklet "instructions to Independent Certified Public Accountants & Licensed Public Accountants Performing Audits of FmHA Borrowers & Grantees".	Borrowers with 25 or more units in one or more projects, or as required by FmHA State Director.	Copy kept by Borrower. Original and one copy to FmHA District Office; one copy to State Office.	May be submitted with previous items but can be submitted separately.

*Signed copy goes to State Office when District Office staff have received delegated approval authority.

EXHIBIT B-8.—MISCELLANEOUS REPORTS OR SUBMITTALS

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
Request for Rental Assistance (Form FmHA 1944-25).	When rental assistance is requested.	Borrower	Multiple Family Housing Borrowers and Applicants with tenants paying rent in excess of 30% of their adjusted income.	Original and copy to District Office; submit to State Office for approval after District Office review.	Refer to Exhibit E to Subpart C, Part 1930 for material to be included with request.
Compliance Reviews (Review conducted within the 1st reporting year after the project is occupied).	Nov. 1st to Oct. 31st of each year.	FmHA District Director.	All Multiple Family Housing Borrowers.	Original to State Office; copy retained in District Office.	Refer to Subpart E, Part 1901, 1901.204(e).

EXHIBIT B-8.—MISCELLANEOUS REPORTS OR SUBMITTALS—Continued

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
(a) Initial reviews (Form FmHA 400-8, "Compliance Review" (Non-discrimination Recipients of Financial Assistance through FmHA)*	The Oct. 31st following loan closing.				
(b) Subsequent reviews (Form FmHA 400-8).	Minimum of every 3 years.				

* If initial rent-up has not occurred by initial review, a subsequent review will be due within one year following initial occupancy and then every 3 years

Exhibit B-9—[Reserved]

Exhibit B-10—Notice of Authorized Withdrawal and Use of Reserve Funds

To:

Borrower Name

Borrower Address

Subject:

Authorized Withdrawal and use of Reserve Account Funds

Project Name ——————

Project Number ——————

This letter authorizes the withdrawal of $______ from the subject reserve account to be used for ______ (Describe uses) ______.

* The (This) amount of $______ is a capital type expenditure and repayment by increasing the reserve payment level is not required; however, the period of deposits are extended until the required deposit level is achieved.

* The (This) amount of $______ is an annual recurring type of expense and must be restored in the reserve account as soon as possible. This amount must be restored to the reserve account plus any required annual reserve payment before any return on investment can be authorized subsequent to this date. (During the second to fifth year of project operation, add this sentence if the initial operating capital has not yet been withdrawn, "This amount will be deducted from the initial operating capital to be withdrawn if said capital is being withdrawn during the current budget year, and this amount has not been restored to the reserve account.")

* The (This) amount of $______ is an annual recurring type of expense and must be restored in the reserve account according to the terms and conditions contained in your special servicing work-out plan with Farmers Home Administration. (Add any additional discussion required.)

The correct level of funding of the project reserve account after this disbursement is (amount) as of (date).

/s/ District Director

* Select appropriate paragraph(s).

BILLING CODE 3410-07-M

Exhibit B-11

Equal Housing Opportunity Logotype

EQUAL HOUSING
OPPORTUNITY

Exhibit B-12

Farmers Home Administration Logotype

FmHA

FARMERS HOME
ADMINISTRATION

BILLING CODE 3410-07-C

Exhibit B-13.—Sample Waiting List

[(1) Project Name; (2) Location]

Applicant information							Selection criteria														
App. No.	Date, time	Name/ address	Phone No.	Race code	HH size	Est. AAI	Displ. prior yes/no	Income				Unit size				RA elig. yes/no		Dates contacted for occupancy	Lease date	Reason removed	
								VL	L	M	I	1Br	2Br	3Br	4Br					Rej.	Cncl.
(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)				(12)				(13)	(14)	(15)	(16)	(17)	(18)

Waiting List Instructions

This sample waiting list may be used as a model in developing a project waiting list. It combines income and unit size groupings on one page. Separate pages for different income levels or unit sizes are an option.

Waiting lists need to be updated periodically by carrying forward active applications and deleting applications that have become tenants or members or have been rejected or cancelled. This should be done with sufficient frequency that a substantial number of lines on the waiting list are filled with active applications. Retired waiting lists must be kept through the next compliance review performed by FmHA.

Description of Input:

1. Project name—Self explanatory.
2. Location—Project Location Name.
3. Application No.—This is the sequential number of the order by which the completed application was received. This may be a continual sequence from a given start date or it may be the sequential number in a particular year. Example: 92-3 denotes the third application received in 1992.
4. Date/Time—The date and time a completed application is received.
5. Name/Address—Name of applicant and current street and/or mailing address.
6. Phone Number—Applicant's current phone number or a contact persons phone number.
7. Race Code—Local management should use a code known to itself or the code provided at § 1900.2 of subpart A of part 1900 of this chapter to protect the applicant's privacy while aiding compliance review. Use letters or numbers or a combination of both. Do not state or abbreviate racial or ethnic descriptions.
8. Household Size—The total number of people who will actually occupy a unit.
9. Estimated Annual Adjusted Income—The household annual income from all sources minus authorized adjustments to income.
10. Displaced Priority—If applicant possesses a letter of priority entitlement (LOPE) issued by FmHA or from other assisted housing enter yes/LOPE. If applicant is displaced due to a natural disaster or catastrophe, enter yes/other. Enter no if applicant is not a displacee.

Note: Section 8 applicants who at time of housing need are involuntarily displaced, or living in substandard housing, or paying more than 50 percent of family income for rent have priority over other section 8 applicants.

11. Income—Enter a checkmark under the income level determined by income verification.

Legend:

VL—Very Low Income
L—Low Income
M—Moderate Income
I—Ineligible

12. Unit Size—Enter a checkmark under each unit size the applicant is qualified to occupy. Circle the checkmark denoting the size requested.
13. Rental Assistance Eligibility—Indicate whether or not the income level qualifies the applicant to receive RA (If RA is being used in the project).
14. Blank Column—This column may be used at management's option. It could denote section 8, handicap status, elderly family status, or tax credit eligibility status.
15. Dates Contacted for occupancy—Enter the dates management contacted or attempted to contact the applicant to offer an apartment for occupancy. Note the method of contact and the results.
16. Lease Date—Fill in date of Lease to denote that applicant has changed to tenant status.
17. Reason Removed (Rejected)—Enter a checkmark and date of rejection when applicable.
18. Reason Removed (Canceled)—Enter a checkmark and date when application is withdrawn by applicant or application has been withdrawn by management after repeated attempts to locate applicant with no response. Indicate whether withdrawn by applicant or by management.

Exhibit B-14.—Reserve Account Tally

[Starting Date: ________; Amount Shown on Loan Agreement/Resolution: $________; Contribution: $______/Month=$______ Annually]

Year	Proposed		Use of reserve			Actual		Reserve balance
	Reg. annual deposit	Required reserve balance	Authorized withdrawal			Transfer to reserve	Interest accrued to reserve	
			Date	Purpose	Amount			
(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

Reserve Account Tally Instructions

1. Enter month and year that cash flow from rental income started.
2. Enter the ultimate reserve amount to be achieved as shown on the loan agreement/Resolution (as modified and increased, if applicable).

3. Enter monthly reserve deposit installment.

4. Enter yearly reserve deposit installment.

5. Enter borrower fiscal year for which records apply.

6. Enter the required annual deposit. If borrower is authorized by an approved budget to contribute less than the amount required by the loan agreement, enter the reduced amount.

7. Enter the required balance at the end of he borrower fiscal year.

8. Enter the date of any authorization for withdrawal from reserve.

9. Enter the purpose and any agreement to repay the withdrawal.

10. Enter amount of authorized withdrawal.

11. Enter the actual amount paid into the reserve account.

12. Enter the actual amount of interest which accrued to the reserve account.

13. Enter the reserve balance at the end of the fiscal year.

Balance at end of last FY
Less authorized withdrawal
Plus transfer to reserve
Plus accrued Interest

Note: Reconciliation of the current account balance may be accomplished by entering the following calculations of the tally sheet.

1. Calculate: Gross Potential Reserve (GPR); No. of Deposit Installments since start date X $ amount of installments=GPR.

2. Add: Additional or Extra Deposits=$ Additions.

3. Subtract: FmHA authorized withdrawals=$ Subtractions.

4. Result: Current Balance=$ Balance.

Exhibit C—Rental and Occupancy Charge Changes

I. *Objectives:* This exhibit prescribes the method of processing changes in the monthly rental or occupancy charge rates for tenants or members in Farmers Home Administration (FmHA) Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects. This exhibit covers all RRH, RCH, and LH loans (except "nonrental" LH loans), including those approved before the date of this subpart.

II. *Definitions:*

A. *Approving Official.* State Director or designated State and District Office staff with delegated authority according to § 1930.143 of this subpart.

B. *Utility.* Sewer, water, trash collection, electricity, natural gas, and any other fuel used specifically for cooking, heating, and/or cooling.

C. *Rental or Occupancy Charge Rate (rental or occupancy charge).* The term rental rate means (1) RRH or LH project rent rates that include utilities, or (2) net project rent rates plus an allowance for utilities, either of which should be equal in value. In RCH projects, the term occupancy charge means (1) the charge for occupancy including utilities, or (2) the net charge for occupancy exclusive of an allowance for utilities according to the operating plan of the cooperative.

III. *Initial Understanding with Borrower:*

A. All RRH, RCH, and LH applicants will be informed at the application stage of the agency's rental or occupancy charge change procedure. All borrowers will be advised that any proposed rent or occupancy charge changes must comply with this exhibit. Utility allowance changes will comply with this exhibit and Exhibit A–6 to subpart E of part 1944 of this chapter. This exhibit will also apply to rental changes resulting from Housing and Urban Development's (HUD) Automatic Annual Adjustment Factors for units receiving Section 8 assistance. Request for a rental or occupancy charge change will be based on a realistic projected budget for the interim year or the ensuing full year.

B. *Rental or Occupancy Charge Change Policies.*

1. Rental or occupancy charge rates in projects financed in whole or in part by an RRH, RCH, or LH loan may not be raised without FmHA written consent according to requirements in loan agreements, loan resolutions, and other instruments executed in connection with RRH, RCH, and LH loans.

2. Changes requiring only prior FmHA review are those which are beyond the borrowers' control to cover changes in taxes or utilities, and changes which do not result in an increase in the tenant's or member's total shelter cost.

3. Borrowers are encouraged to have the effective date of needed changes coincide with the start of their fiscal year or with the start of the season in the case of LH projects occupied on a seasonal basis.

4. Change requests normally should be made at least 60 days prior to the end of the borrower's fiscal year.

5. It is anticipated that rental or occupancy charge changes would not be necessary more frequently than once a year.

6. Changes in rental or occupancy charge rates will apply to all units in the project.

7. Projects with operating budgets that consistently generate a surplus of unrestricted cash greater that 10 percent of project yearly operation and maintenance expense (exclusive of any qualifying refund of 2 percent initial operating capital contribution) should reduce their rental or occupancy charge rates.

C. All borrowers are encouraged to participate in the FmHA Rental Assistant (RA) Program. However, unless the Administrator notifies State and District Offices otherwise, all borrowers with projects meeting the eligibility requirements of paragraph II B of Exhibit E of this subpart, except full profit borrowers, will be required according to section 530 of title V of the Housing Act of 1949, as amended, to apply for and accept RA when it appears that a rental or occupancy charge change will cause more than 20 percent of the low-income tenants to pay in excess of 30 percent of adjusted monthly income for shelter costs. If FmHA does not have RA available for this purpose, the borrower is encouraged to use other sources of governmental subsidies. The availability or unavailability of governmental subsidies will not preclude FmHA from processing a rental or occupancy charge change request.

D. Even though RA is not available, borrowers are encouraged to convert to Interest Credit Plan II to give tenants and members the most favorable rates possible.

IV. *Borrower's Responsibility in Processing Rental or Occupancy Charge Changes Which Increase Housing Costs to Tenants or Members and Require FmHA Prior Approval:*

A. When an RRH, RCH, or LH borrower determines that a project rental or occupancy charge change is needed for reasons other than those specified in paragraph VI, the borrower must meet with the District Director, unless such requirement is waived by the District Director, to review the following information before the "Notice to Tenants of Proposed Rent or Occupancy Charge and Utility Allowance Change" is posted and delivered to the tenants or members:

1. Facts demonstrating the need and justification for a rental or occupancy charge change in accordance with paragraph III A of this exhibit.

2. A new operating budget for borrower fiscal year showing:

a. Currently approved budget at old rents or occupancy charges.

b. Actual income and expenses to date.

c. Proposed budget at proposed new basic rents or occupancy charges.

d. Proposed budget at proposed new note rate rents or occupancy charges (when applicable).

3. An application for RA on Form FmHA 1944-25, "Request For Rental Assistance," if the borrower's project is an eligible project and the proposed change will cause 20 percent of the very low- and low-income tenants or members to pay in excess of 30 percent of adjusted monthly income for shelter costs. If the low-income tenants or members are receiving some other form of shelter subsidy, such as HUD's existing section 8 or housing voucher, an exception may be made to this requirement.

4. A new energy audit or a listing of deferred improvements identified in a previous energy audit that was performed within the past five-year period according to the requirements of Exhibit D of this subpart.

5. Information on actual utility costs for representative units in the project and an updated Exhibit A–6 to Subpart E of Part 1944 when tenants or members pay their own utilities.

6. Any other information the borrower believes necessary to justify the proposed shelter cost change.

B. Upon receipt of the rental or occupancy charge change request as prescribed in paragraph IV A, the District Director will take one of the following actions within 15 days:

1. Review the package and if it is incomplete, return it to the borrower/manager, advising what additional information is needed, or

2. Request a meeting with the borrower/manager and state the proposed date. The request should inform the borrower/manager the purpose of the meeting. If the borrower/manager does not attend the proposed meeting or other mutually agreed date, the change request will be considered withdrawn and returned to the borrower/manager, or

3. Waive the meeting requirement and authorize the posting subject to any minor changes or other requirements listed, if any, or

4. Allow posting of the request by not taking action on the request.

C. When a meeting is held, the District Director will EITHER:

1. APPROVE posting of the proposed rental or occupancy charge change and advise the borrower in writing to POST the notice, OR

2. If the proposed change as submitted is not acceptable, the District Director and the borrower/manager will arrive at a mutually acceptable change, and the District Director will authorize in writing, posting of the agreed to figure, OR

3. REJECT posting of the proposed change, advise the borrower in writing to NOT POST the notice and advise the borrower of their appeal rights in accordance with subpart B of part 1900 of this chapter (available in any FmHA office).

D. Once a rental or occupancy charge change has been permitted to be posted, the only decision that can be made is to "APPROVE" or "REJECT," which would be based on the comments of the tenants or members.

E. Current tenant or member certifications on Form FmHA 1944-8 "Tenant Certification," or other form approved by FmHA must be on file in the District Office.

F. After the borrower and District Director have reviewed the rental or occupancy charge change application, the borrower will notify all affected persons of any proposed shelter cost change using the format of Exhibit C-1 of this exhibit. The "Notice to Tenants or Members of Proposed Rent or Occupancy Charge and Utility Allowance Change" will advise tenants or members that during a 20-day comment period identified in the posted notice, they have an opportunity to inspect, copy, and make written comments or objections to all materials which will be made available to them justifying the proposed changes. Tenants or members will be advised that they may also review any subsequent material submitted by the borrower to FmHA to support the changes. If subsequent material is submitted, the borrower will be required to post a new notice. The Notice will advise the tenants or members that all written comments or objections should be submitted directly to the FmHA District Director by the end of the 20 day comment period. Tenants or members must be notified by the following methods:

1. The owner or management agent must mail or hand deliver copies of the notice to all affected persons and the District Director at least 60 days prior to the anticipated effective date of the rent or occupancy charge and/or utility allowance change. By the end of the 20-day comment period, which is included within the 60-day period, the borrower may submit to the District Director any other information to be considered.

2. The management must also post prominently in common areas around the project (laundry rooms, parking areas, recreation rooms, etc.) copies of the Notice. In addition to plain English, all notices will be published in the other primary languages of the tenants or members.

G. Notification to the tenant or member of proposed rental or occupancy charge change will not be required when a change in the utility allowance only is proposed on Exhibit A-6 of subpart E of part 1944 of this chapter, and the utilities are paid directly by the tenants or members. This does not preclude posting of the FmHA Letter of Approval as provided for in paragraph V.B.1. of this exhibit.

V. Determination by FmHA:

A. *Actions by District Director.* The District Director will not consider a rental or occupancy charge change application complete and acceptable until the borrower has complied with all terms listed in paragraph IV of this exhibit. When the application and all attachments for the proposed change have been received (including the tenant or member comments when notification is required), the District Director will:

1. Review all the material submitted.

2. Provide a copy of the borrower's latest Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance."

3. Determine if RA is available for an eligible project on behalf of the low-income tenants or members.

4. When the change is requested for energy saving improvements identified in an Energy Audit, the District Director shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit. The District Director's determination will be made according to paragraph VI of Exhibit D of this subpart.

5. When State Office approval is required, the District Office will submit to the State Director (see Guide Letter 1930-3 for outlining the change request package being submitted):

a. Appropriate recommendations on the request,

b. An indication of the number of tenants or members who will need RA as a result of the rent changes,

c. All the material received from the borrower, including tenant or member comments or objections, at the end of the 20-day comment period,

d. A short narrative describing the general tone of tenant or member comments and concerns.

6. When a member of the District Office staff is the approval official, the documentation required by V A 5, will be attached to the rent change request.

7. When the borrower has requested RA, complete Form FmHA 1944-25 and forward it to the State Director.

B. *Actions by the Approval Official.* When the application, attachments and comments are received, the approval official will review the material to determine if the change is justified. The borrower will be notified by the approval official of the determination within 45 days from the date the "Notice to Tenants (Members) or Proposed Rent (occupancy charge) and Utility Allowance Change" is posted.

1. *Approval Actions.*

a. When a change is approved, the approval official will notify the borrower by using Exhibit C-2 of this subpart. The Notice letter will be prepared using the required and/or optional paragraphs as applicable. The reasons for the approved rent change should be concise. The Notice Letter will be mailed or hand delivered to each tenant or member and posted in a conspicuous places(s).

b. When the borrower's project is operated on a profit basis and the purpose of the rental change is for: Justified operating and maintenance expense; funding the reserve account; other project expenses; providing or maintaining a profit, the change may be allowed as long as eligible tenants can afford the new rental rate.

2. *Disapproval Actions.* When the approval official determines an application for a proposed rental or occupancy charge change is not justified on the basis of the information submitted, the approval official will notify the borrower in writing of the reason(s) why the change is not approved. The borrower will be advised of their appeal rights in accordance with subpart B of part 1900 of this chapter. Rental or occupancy charge changes may not be approved when any of the following circumstances exist:

a. The borrower is able but unwilling: To comply applicable tenant eligibility requirements; the audit and reporting requirements of this subpart; or, the conditions set forth in the borrower's loan agreement or resolution, interest credit and/or rental assistance agreement, promissory note, or mortgage.

b. The budget for the project reflects sufficient income at the present rental or occupancy charge structure to meet operation and maintenance expenses which are appropriate and reasonable in amount, meet the FmHA debt service requirements, meet the required reserve account deposit, and provide a return to the borrower, when appropriate.

c. The borrower's project is operated on a profit basis and the proposed rental change is for purposes other than meeting operation and maintenance expenses and debt service; i.e., the purpose is to allow excessive profits and the proposed rental change will result in rental rates in excess of what eligible tenants can afford.

d. The State Director is able to provide RA to the project and the borrower's project is operated on either a nonprofit basis or limited profit basis as defined in § 1944.205 of subpart E of part 1944; but the borrower has not applied for RA within the most recent period of 180 days prior to the rental change request.

VI. Changes Requiring FmHA Prior Review Only:

A. Project rental or occupancy charge changes caused by increases in operating costs for taxes and utilities, which are beyond the borrower's control, may be implemented with only prior FmHA review. The changes may not be greater than the amount necessary to cover the specific tax or utility increases.

1. Prior to notifying tenants or members, the borrower must meet or consult with the District Director to review:

a. A new operating budget for borrower fiscal year showing:

(1) Currently approved budget.

(2) Actual income and expenses to date.

(3) Budget at new basic rental or occupancy charge rates.

(4) Budget at new note rate rental or occupancy charge rates (when applicable).

b. A copy of the notification to the borrower from the taxing body or vendor showing that taxes or utilities are being increased. The amount of the change or the basis on which the increased cost can be computed, must be shown in the notice.

c. Detailed calculations showing how the increased operating cost was determined.

d. An updated Exhibit A-6 to subpart E of part 1944, when the tenants or members pay their own utilities and the rental or occupancy charge change involves a change of utility costs.

e. A new energy audit or a listing of deferred improvements identified in a previous energy audit that was performed within the past five-year period according to the requirements of Exhibit D of this subpart or regulations then extant.

2. The District Director shall review the budget and supporting documentation and when found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.

3. In addition to notifying each tenant or member of the new rental or occupancy charge rates as required by State law. The borrower will:

a. Include in the notice an explanation of the increased costs which necessitated the change.

b. Mail a copy of the notice to the tenant or member at least 30 days prior to the effective date of the change.

c. Offer the tenants or members an opportunity to meet with management, discuss the change and review all material necessitating the change.

d. Inform the tenants or members of their right to request a review of the change approval decision within 45 days of the date of the notice by writing to the next higher FmHA approval official. Until the request is resolved, the tenants or members are required to pay the changed amount of rent as indicated in the Notice of Approval.

B. Rental or occupancy charge changes decreasing or not increasing tenant's total shelter cost (rent or occupancy charge plus utilities), may be implemented with only prior FmHA review provided:

1. Prior to notifying tenants or members, the borrower must meet with the District Director to review:

a. A new borrower fiscal year operating budget showing:

(1) Currently approved budget.

(2) Actual income and expenses to date.

(3) Budget at new basic rental or occupancy charge.

(4) Budget at new note rate rental or occupancy charge rates (when applicable).

b. Any material contributing to the change and justification for the change.

c. An updated Exhibit A-6 to subpart E of part 1944 when the change involves the utility allowance.

2. The District Director shall review the budget and supporting documentation, and when found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.

3. In addition to any State requirements, the borrower notifies each tenant or member of the new rates and/or utility allowance using Exhibit C-2, and:

a. Include in the Notice an explanation of the changes and events which necessitated the change. Also, the explanation must specify any adverse and/or positive effect the change may have on the tenants or members.

b. Mail a copy of the Notice to the tenant or member at least 30 days prior to the effective date of the change.

c. Offer the tenants or members an opportunity to meet with management to discuss the change and review any material contributing to the change.

d. Inform the tenants or members of their right to request a review of the rate change approval decision according to paragraph VI.A3d. of this exhibit.

VII. *Unauthorized Rental or Occupancy Charge Changes.* When a borrower implements a change that does not meet the requirements of this exhibit, the borrower will be notified in writing that: (1) The change has not been authorized, and (2) the rates must be rolled back to the last FmHA authorized level. Tenants or members affected by the unauthorized change will be given a rebate or credit for the unauthorized amounts retroactive to the date of the unauthorized change. Those borrowers that fail to comply with the provisions of this paragraph will be handled according to paragraph X. of this exhibit or § 1965.85(d) of subpart B. of part 1965 of this chapter.

VIII. *Annual Adjustment Factors for Section 8 Units.*

A. *HUD allowance of change.* If the approval official disapproves a rental rate change requested as a result of HUD's annual adjustment factors for units receiving Section 8 assistance, or approves a rental change for a lesser amount than the change permitted by HUD, the approval official must require the borrower to deposit any excess funds into the Reserve Account. If this results in an accumulation of funds in the Reserve Account beyond the sum shown in the Loan Agreement or Loan Resolution, the interest credit reduction on a Section 8/515 project should be adjusted or canceled through field office terminals. This can be done without borrower consent for projects with interest credit agreements dated on or after October 27, 1980. For projects with interest credit agreements dated before October 27, 1980, this cancellation or reduction of interest credit may occur only with the borrower's written consent. The borrower will still be required to operate on a limited profit basis.

B. *HUD disallowance of change.* If HUD will not allow an annual adjustment of rents, and the project operating budget justifies need for rent(s) greater than HUD's contract rent(s), the State Director only may authorize conversion from a plan of 1 or 2 percent interest reduction to a plan of debt amortization at 1 percent interest plus overage up to the HUD contract rent(s) level.

IX. *Rental or Occupancy Charge Control Preemption Policy.* In order to carry out the provisions of this subpart and to protect (1) a housing source in rural areas for very low, low and moderate income families, (2) the financial obligation of borrowers, and (3) the financial interest of the government in such housing, the entire field of rental or occupancy charge control that may be exercised by any local rental control board or other authority pursuant to State and local law, as it affects housing covered by this subpart, is hereby preempted.

X. *Special Servicing Market Rate Rent (SMR) Change:* When a Plan II. or Plan II. RA RRH project is experiencing severe vacancies due to poor local market conditions, an SMR change may be implemented to attract and keep tenants who could pay more than basic rent as part of a workout plan according to the provisions of Exhibit F. of subpart B. of part 1965 of this chapter. An SMR addresses the situation where some existing and prospective tenants are not willing to pay 30 percent of adjusted income or note rate rent because the rental rates would exceed those of other rental properties in the community. This action may only be taken after supervisory efforts by FmHA and management efforts by the borrower have not produced an acceptable level of occupancy. For the purposes of this paragraph, market area and community are used as defined in paragraph II. of Exhibit A-7 of subpart E. of part 1944.

A. *Eligibility for SMR.* Based on borrower documentation and FmHA servicing records, the District Director will prepare a written recommendation for borrower eligibility for an SMR.

1. *Based on borrower documentation and District Office verification:*

a. Over the most recent 6-month period, the monthly vacancy rate has averaged at least 15 percent or the project shows financial losses considering the following:

(1). Each month was at least 12 percent vacant, and

(2) When RA is not available, units subsidized by funds of the project/owner will be considered vacant for SMR calculations, OR

(3) The project submits financial records that show a 15 percent loss of rents available below basic rent not including project provided subsidies, and provided

(4) The loss of rents available is not a result of management's failure to effectively market the units.

b. Comparable market rental rates in the community are lower than the previously approved FmHA note rate rents. Exhibit A-2 to subpart E of part 1944 can be used to document comparable market rents.

c. The borrower has aggressively marketed the project including the following actions:

(1) Significant outreach efforts in the community, including (but not limited to) contacts listed in the Affirmative Fair Housing Market Plan (AFHMP).

(2) The borrower had obtained approval from FmHA at least 3 months earlier to rent to ineligible tenants in accordance with paragraph VI.B.6. of Exhibit B of this subpart.

d. The borrower complies with FmHA regulations and encourages occupancy through good maintenance and positive relations with tenants.

e. The borrower has provided a signed statement agreeing to forego, without

provision to recoup, the return on initial investment while operating with an SMR.

f. The borrower has submitted a project budget on Form FmHA 1930-7, "Multiple Family Housing Project Budget," with only minimally sufficient operation and maintenance expenses. The project budget should continue to fund other cash expenditures such as FmHA payments and the reserve account, except for the return on initial investment which the borrower has agreed to forego according to paragraph X.A.1.e. of this exhibit.

2. *Based on District Office servicing actions and documentation:*

a. The project has been operational for at least 24 months. The National Office may make exceptions to this requirement on a case-by-case basis for extreme hardship.

b. No more than 10 percent of budgeted operation and maintenance expenses are reflected in unrestricted cash on hand, or 25 percent if any funds remain from the 2 percent initial operating capital, and reserve account balances do not exceed the required accumulation to date minus authorized withdrawals.

c. The District Director has reviewed and discussed with the borrower the feasibility of using borrower contributed funds, including advances, in accordance with paragraph XII.C. of Exhibit B of this subpart.

d. The District Director has reviewed and approved a project budget with only minimally sufficient operation and maintenance expenses and other expenses as specified in paragraph X.A.1.F. of this exhibit.

e. The District Director has reviewed any market studies or surveys received from MFH loan applicants for the market area and considered any information that may conflict with the request for an SMR.

B. *Approval of SMR*

1. The State Director may approve the use of an SMR when the conditions listed above in paragraph X.A. of this exhibit are met.

2. While a request for an SMR is pending or an SMR is in effect, no initial RRH loan may be obligated for the same market area unless authorized by the Assistant Administrator, Housing.

C. *Implementing an SMR.*

1. After the use of an SMR has been approved by the State Director, the District Director will establish an SMR for the project with the borrower.

a. The SMR will be obtained by adjusting the "FmHA Debt Payment" item in the "Proposed Budget" column of Form FmHA 1930-7, to reflect a payment to FmHA amortized at an interest rate which is less than the full note rate on the borrower's promissory note. The interest rate chosen may never be less than 2 percent.

b. The interest rate of the SMR budget will be set at a level that will make project SMR rental rates comparable with community rental rates. This rate will remain constant except as provided in paragraph D of this exhibit.

2. The initial change to SMR rents or a decrease in SMR rents will be accomplished in accordance with paragraph VI.B. of this exhibit.

3. When an SMR is implemented in a Plan II Section 8/515 Project Project, use lines 23 through 29 of Form FmHA 1944-29, to report any additional payments to the reserve account required when HUD contract rents exceed SMR rental rents.

D. *Changing an SMR.*

1. An SMR may be increased or decreased whenever the local market conditions warrant, but must be reviewed at least annually. This requirement should be met before considering any that follow.

2. An SMR must be increased by a minimum of 10 percent per year (or a higher amount if mutually agreed to by the borrower and FmHA) when the:

a. Vacancy rate drops to 10 percent or below for 6 consecutive months, or

b. The borrower does not continue to satisfy the conditions of paragraphs X.A.1.c. (i) and (ii), d, e, or f of this exhibit.

3. An SMR is completely terminated when the note rate rent is regained.

4. An increase in an SMR will be accomplished in accordance with paragraph IV of this exhibit.

E. *Disapproval of SMR.* When the approval official determines a request for an SMR is not justified on the basis of the information submitted, the approval official will notify the borrower in writing of the reason(s) why the SMR is not approved. The borrower will be advised of their appeal rights in accordance with subpart B of part 1900 of this chapter.

XI. *Special Problem Cases.* Problem cases which cannot be handled under this subpart should be submitted to the National Office for review with the State Director's recommended plan of action.

Exhibit C-1—Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change

Date Posted

You as a tenant (member) are hereby notified that, subject to Farmers Home Administration approval, rents (occupancy charge) and utility allowances will be changed effective ______ (at least 60 days from posting)

has filed with the Farmers Home Administration (FmHA), United States Department of Agriculture, a request for approval of a change in the monthly rent (occupancy charge) rates and/or utility allowances of the (Name of apartment complex) for the following reasons:

1.
2.
3.
4.

Planned rent (occupancy charge) changes are as follows:

Unit size	Present rent (occupancy charge)		Proposed rent (occupancy charge)		Amount changed
	Basic	Note rate	Basic	Note rate	

Planned utility allowance changes are as follows:

Unit size	Present utility allowance	Proposed utility allowance	Amount changed

(Use where applicable: Since you receive subsidy, your contribution for rent (occupancy charge) and utilities will not be changed so long as your income and household composition remain unchanged.)

All materials justifying the proposed changes have been reviewed by FmHA and will be made available to you and other tenants (members) to inspect and copy at

during the hours of ______.

You may submit comments or objections in writing to the FmHA District Director during the 20-day period immediately following the posting of this notice. Comments or objections should include reasons or information you feel should be considered by the FmHA approval official. Your comments or objections must be filed prior to ______ with the FmHA District Director, ______, at the District Office located at

______
______.

These comments will be reviewed by the FmHA District Director and forwarded to the FmHA approval official who will decide if the change(s) should be approved.

Each tenant (member) will be notified in writing of the FmHA decision to approve or deny the change. The approved rents and utility allowances will then be effective upon the effective date given above. If the approved changed cannot be made effective by such date, an additional notice will be posted and the tenants (members) will be notified in writing that new rents (occupancy charges) and utility allowances will be effective at the next rent (occupancy charge) due date following the additional notice and the FmHA approval.

By ______

Borrower/Borrower's Representative

Exhibit C-2—Notice of Approved Rent (Occupancy Charge) and Utility Allowance Change

Dear ______

You are hereby notified that the Farmers Home Administration (FmHA) and the owner have reviewed the request and justification(s) for a rate change and has approved the following rent (occupancy charge) and/or utility allowance rates for the ______ project(s). The changes for all units will become effective on ______, 19____. (Insert effective date shown in Exhibit C-1 or later effective date in accordance with last paragraph of Exhibit C-1.) The change is needed for the following reasons:

(Insert Reasons for Approval)

The approved changes are as follows:

Unit size	Present rent (occupancy charge)		Approved rent (occupancy charge)	
	Basic	Note rate	Basic	Note rate

The approved utility allowance changes are as follows:

Unit size	Present utility allowance	Proposed utility allowance	Approved utility allowance

(Use the following required and/or optional paragraphs where applicable.)

*You must notify the tenants (members) of FmHA's approval of the rent (occupancy charge) and utility allowance changes by posting this letter in the same manner as the "NOTICE TO TENANTS (MEMBERS) OF PROPOSED RENT (OCCUPANCY CHARGE) AND UTILITY ALLOWANCE CHANGE." This notification must be posted in a conspicuous place and cannot be substituted for the usual written notice to each individual tenant (member).

*This approval does not authorize you to violate the terms of any lease (occupancy agreement) you currently have with your tenants (members).

**For those tenants (members) receiving rental assistance (RA), their costs for rent (occupancy charge) and utilities will continue to be based on the higher of 30 percent of their adjusted monthly income or 10 percent of gross monthly income or if the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter cost. If tenants are receiving Housing and Urban Development (HUD) Section 8 subsidy assistance, their costs for rent and utilities will be determined by the current HUD formula.

**Your application for RA units on behalf of eligible tenants (members) has been received. Since RA units are not available, the approved rate and/or allowance change is subject to your acceptance of the RA units should they become available.

**This rate and utility allowance change is conditioned on the requirement that you carry out energy conservation measures and practices as determined necessary by the project energy audit. You will be allowed ____ days for completion of the work. FmHA assistance may be available to finance any needed improvements.

**You may file an appeal regarding the rate and utility allowance change as approved within 45 days of the date of this notice. An appeal by you must be in writing to (insert the name of the appropriate hearing officer) as specified in subpart B of part 1900 of this chapter.

*You must inform the tenants (members) of their right to request a review of the rate and utility allowance change approval decision within 45 days of the date of this notice by writing to (*insert the name and address of next higher FmHA approval official*). Until the request is resolved, the tenants (members) are required to pay the changed amount of rent (occupancy charge) as indicated in the Notice of Approval.

*Any tenant who does not wish to pay the FmHA approved rent changes may give the owner 30-days notice that they will vacate. The tenant will suffer no penalty as a result of this decision to vacate, and will not be required to pay the changed rent. However, if the tenant later decides to remain, in the unit, the tenant will be required to pay the changed rent from the effective date of the changed rent.

Sincerely,

____

FmHA Approving Official

*Required

**Optional, as applicable

Exhibit D—Energy Audit

I. *Objectives:* The basic objective of this Exhibit is to define the Farmers Home Administration (FmHA) requirement in Multiple Family Housing projects for an energy audit and what is included in an energy audit.

II. *Purpose:* An energy audit and implementation of the recommended improvements contained therein should: Reduce tenant or member and/or borrower utility costs; reduce project operating costs; reduce subsidy costs; improve the value of the borrower's property; conserve National energy resources within cost effectiveness; and increase the comfort and enjoyment level in the project by the tenants or members.

III. *Borrower Responsibility:*

A. *Initial Audit.* An initial energy audit is required for each project during the third year of operation following completion of construction for "early" detection of any energy conservation deficiencies.

B. *Subsequent Audit.* A subsequent energy audit is required at least five years following the initial audit and at least every five years thereafter, to identify if further feasible improvements to energy conservation measures and practices are needed.

C. *Submission of Audit.* The borrower shall submit a copy of the initial or subsequent energy audit along with the annual project report due following the end of the borrower's fiscal year. The borrower's plan for implementing the recommended improvements shall be included with the report. If any of the improvements are deferred due to cost ineffectiveness, the borrower shall, each year thereafter, include with the annual project report, an updated cost feasibility analysis of the deferred improvements, along with the borrower's recommendation for implementing the improvements. The audit will also be submitted to meet the requirements of Exhibit C of this subpart.

D. *Cost of Audit.* An energy audit is beneficial to the operation of a MFH project. The cost of the audit is an operational expense. The cost should be consistent with the size of the project and comparable to the cost of other audits in the area. The cost may be paid from annual revenue or from the reserve account depending on the amount.

IV. *Performance of Energy Audit*

A. An energy audit shall be in an in-depth, on-site inspection of the building shell and of the space heating, space cooling, ventilation and water heating equipment for the building. It shall be conducted by a qualified energy auditor.

B. Persons shall be considered qualified to perform an energy audit if they:

1. Are authorized under a State Plan approved by the Department of Energy (DOE) in accordance with the requirements in 10 CFR part 456, or,

2. Are authorized under a Federal Standby Plan promulgated by DOE in accordance with the requirements in 10 CFR part 456, or,

3. Can demonstrate that they possess the skills and knowledge necessary to perform energy audits.

C. The energy auditor shall inspect the building to determine which energy saving MEASURES AND PRACTICES should be improved. The energy auditor is expected to summarize the results of this inspection and projected cost savings and include them in a written report.

1. The report shall address the following energy saving MEASURES:

a. Caulking and weatherstripping.

b. Replacement central high efficiency air conditioners.

c. Ceiling, wall, and floor insulation.

d. Duct or pipe insulation.

e. Water heater insulation.

f. Storm or thermal windows and doors.

g. Heat-reflective window and door material.

h. Load management devices.

i. Clock thermostats.

j. Furnace efficiency modifications.

2. The report may address the following energy saving measures if significant benefits can be shown in the opinion of the energy auditor:

a. Solar domestic hot water systems.

b. Active solar space heating system.

c. Combined active solar space heater and solar domestic hot water systems.

d. Passive solar space heating and cooling systems.

3. The auditor shall inspect the building and report any improvement of energy conserving PRACTICES that can lead to immediate energy savings. These practices include, but are not limited to, the following:

a. Furnace efficiency maintenance and adjustments (air filters should be changed frequently).

b. Water flow reduction on showers and faucets.

c. Sealing leaks in pipes and ducts.

d. Raising thermostat settings in summer and lowering them in winter.

e. Nighttime temperature setback.

f. Reducing energy use when apartment is unoccupied.

g. Plugging leaks in attics, basements, and fireplaces.

h. Efficient use of shading.

i. Reduce water heater temperature setting (should not exceed 120 degrees Fahrenheit).

4. The report shall include a list of any recommended energy saving measures and/or practices. The following information shall be provided as applicable:

a. Description.

b. Estimated useful life.

c. Estimated annual energy cost savings in the first year.

d. Cost.

e. Estimate of any incremental annual operation and maintenance costs.

5. The report shall include a summary of the energy auditor's qualifications.

V. *Funding:* Improvements may be funded from annual project income, project reserve, a subsequent loan, borrower's funds, or any other FmHA authorized funding which will

keep the improvement cost effective. Plans for funding the improvements should be included in the borrower's recommendation for implementation.

VI. *District Director Responsibility:*

A. The District Director shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit.

1. *Cost effectiveness.* Cost effectiveness shall be determined by comparing the value-in-use of the facility with and without the proposed energy saving improvement. Exhibit D of subpart B of part 1922, which is available in any FmHA office, "Guide for Appraisal of Energy Saving Measures" describes the "value-in-use" approach that may be used to appraise cost effectiveness.

2. *Financial Impact.* Financial impact shall be determined by comparing the estimated net energy and operation and maintenance costs savings in the first year to the annual cost of amortizing a loan to install the proposed energy saving improvement. A positive financial impact occurs when the first year annual savings equals or exceeds the annual cost of amortizing any loan(s) for the proposed energy savings improvement. Exhibit D-1 of this subpart may be used to organize the calculation of the financial impact.

3. When the identified and/or deferred improvements determined by an energy audit obtained within the immediate past five year period are found to be cost effective and have a positive financial impact, the District Director shall recommend or require that any rent or occupancy charge increase approval requested by the borrower be conditioned upon installation of such energy saving improvement(s).

4. The District Director may recommend a rent or occupancy charge increase for energy saving improvements which are not "cost effective" whenever the borrower contributes sufficient funds to reduce the cost of the improvement so that, on the basis of the FmHA investment only, the improvement is cost effective. A positive first year financial impact is not required. Any contribution made by the borrower to reduce the cost of the improvement to the cost effective limits will not be an eligible contribution for computing return on investments. The project reserve may not be utilized for such contribution.

B. When the improvements are not cost effective or do not have a positive financial impact, and the borrower does not elect to reduce the cost of the energy saving measures as described in Paragraph VI.A.4. of this exhibit, the District Director shall recommend deferral of implementation of the improvements. Any deferred improvements must be analyzed during each subsequent year's annual analysis.

C. A copy of the decision regarding the energy audit will be included in the annual reports forwarded to the State Director.

VII. *State Director Responsibility:* The State Director shall review the District Director's recommendations and the decision regarding implementation of the proposed improvements and/or practices as a part of the annual report review.

VIII. *Development:* All development will be performed in accordance with the requirements of subpart E of part 1944 of this chapter and subpart A of part 1924 of this chapter, except that § 1924.6(b)(3)(i) of subpart A of part 1924 will not apply to improvements made by the owner-builder method.

IX. *Rent or Occupancy Charge Change:* Any rental or occupancy charge change necessitated by the improvements must be processed as set forth in Exhibit C of this subpart.

Exhibit D-1—Calculation of Financial Impact (Energy Audit)

A. First Year Annual Savings (from audit)	$______
B. Annual Cost of Amortized Loan (from calculation in Part D below)	$______
C. Difference (A−B) (if zero or greater, energy savings measure has a positive financial impact)	$______
D. Calculation of Annual Cost of Amortized Loan for Energy Saving Measures:	
1. Appraisal of Energy Saving Measure (for calculation of Appraised value, see Exhibit D, subpart B of part 1922)	$______
2. Amortization Factor (for calculation of Amortization factor, use interest rate of Rural Rental Housing and Rural Cooperative Housing and Rural Cooperative Housing from FmHA Instruction 440.1, Exhibit B; the Useful Life or weighted average of Full Life for more than one energy saving measure from the energy audit; and the Amortization factor from FmHA Instruction 440.1, available in any FmHA District Office)	x______
3. Annual Cost (Appraisal x Amortization factor enter answer in Part B above)	$______

Exhibit E—Rental Assistance Program

I. *General.* The objective of the rental assistance (RA) program is to reduce rents paid by low-income households. This exhibit sets forth the policies and procedures and delegates authority under which RA will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and eligible members occupying Rural Cooperative Housing (RCH) projects financed by Farmers Home Administration (FmHA). For the purposes of this exhibit, the term "tenant" also means "member." This exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public agency. RA will supplement the benefits available to tenants under the interest credit program outlined in Exhibit H to this subpart.

II. *Definitions.*

A. *Eligible Tenants.* Any very low-income, or low-income household meeting the following requirements:

1. The household adjusted annual income must not exceed the very low- or low-income limit established for the area as indicated in Exhibit C to subpart A. of part 1944. of this chapter (available in any FmHA Office.)

2. The household must be unable to pay the approved rental rate plus utility allowance and occupancy surcharge within a portion of their income not exceeding the highest of:

(a) 30 percent of their adjusted monthly income; or

(b) 10 percent of gross monthly income, or

(c) If the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter cost.

3. The household must meet the occupancy policy established for the project and approved by FmHA according to paragraph VI.B.2. of Exhibit B of this subpart.

4. The household must have an unexpired and signed Form FmHA 1944-8, "Tenant Certification," on file with the borrower.

B. *Eligible project.*

1. All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except LH loans, direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be eligible for RA the project must have a:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, including Senior Citizen Housing (SCH), or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205 of subpart E to part 1944 of this chapter, or

c. RCH insured or direct loan, or

d. LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local Public Agency.

2. Borrowers may utilize the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program and FmHA RA in the same project. In such cases the interest credit plan code for the project must be (5) Plan II RA. Each individual loan must have a separate Form FmHA 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement" reflecting the units covered by that loan. If all the units built by the loan are Section 8, the Form FmHA 1944-7 will indicate Plan II. If any of the units covered by the loan are eligible for RA, the Form FmHA 1944-7 for that loan will indicate Plan II RA.

3. Borrowers will provide RA to only those eligible tenants occupying LH, RCH, or RRH rental housing units financed by FmHA.

C. *Operational project.* A completed RRH, RCH, or LH project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants.

D. *New Projects.* Newly constructed or substantially rehabilitated RRH, RCH, or LH project financed by FmHA. For new construction RA purposes, it further means before any units are occupied.

E. *Rental Assistance.* RA, as used in this exhibit, is the portion of the approved shelter cost paid by FmHA to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV.A.2.C. of Exhibit B to this subpart. When the household's monthly gross tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the household that difference according to paragraph IX.A.2. of this exhibit.

F. *Replacement Units.* RA units which replace RA units in RA agreement expiring because obligated funds have been fully disbursed.

G. *Servicing Units.* RA units which increase the number of RA units resulting in initial or additional RA agreements.

H. *Shelter Cost.* The approved shelter cost consists of basic or note rate rent plus utility allowance and occupancy surcharge, when required. Basic and/or note rate rent must be shown on the project budget for the year and approved according to § 1930.124 of this subpart. Utility allowances, when required, are determined and approved according to Exhibit A–6 to subpart E of part 1944 of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C to this subpart.

I. *Utility Allowances.* The allowance approved by FmHA according to Exhibit A–6 to subpart E of part 1944 of this chapter, to cover the cost of utilities which are payable directly by the households.

III. *Utilization of Rental Assistance.* All borrowers with eligible projects as defined in paragraph II.B. of this exhibit are encouraged to utilize the RA program and received RA payments on behalf of eligible tenants. Generally, the borrower, or the borrower's approved management agent, will initiate the processing of a RA application.

IV. *Priority of Rental Assistance Applications.*

A. *State Allocations.* The National Office may establish a State quota on the number of RA units that may be approved and obligated in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for operational projects and the number of RA units to be used for new construction. Priority in allocating RA units will be as follows:

B. *Allocation to Projects Within a State.* The State Director will distribute any RA units allocated to the State according to any specific guidance established by the National Office. When no specific guidance is established by the National Office the State Director will approve requests for RA to projects according to the provisions of this exhibit.

1. *Replacement Units:* The State Director will distribute or reserve RA units and give priority to projects needing replacement units before any initial or additional units are allocated to other new or operational projects. The State Director should ascertain how many RA units are expected to expire in each District Office during the current fiscal year and the first quarter of the following fiscal year.

2. *New Housing:* Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order:

a. Applications for RRH and RCH loans where the market survey information indicates that a large percentage of the prospective tenants needed RA. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those project located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231 of subpart E of part 1944. of this chapter.

b. For LH projects, RA units will be allocated by the National Office from the National Office reserve on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3. *Operational Housing:* When the National Office provides an allocation for servicing RA units, the State Director will distribute them to operational RRH, RCH, and LH projects based on Forms FmHA 1944–25, "Request for Rental Assistance," that have been submitted by eligible borrowers. Priority will be given to projects based on this exhibit and administrative directives issued by the National Office under the annual RA allocations or other authorizations or guidelines established through the budget process. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA for consideration.

V. *Processing of Rental Assistance Applications.* All requests for RA will be processed according to this paragraph and may be approved by the State Director.

A. *Operational Projects.*

1. A borrower with an eligible project in which there are tenants paying in excess of 30 percent of their adjusted income for rent is encouraged to file Form FmHA 1944–25 with the District Director. A separate Form FmHA 1944–25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," with all columns completed for each tenant in the project. (All Forms FmHA 1944–8 must be current.)

b. Approved or proposed budget for the year on Form FmHA 1930–7, "Multiple Family Housing Project Budget," with Exhibit A–6 to subpart E of part 1944 of this chapter attached, when applicable.

2. Prior to the full disbursement of obligated funds on any agreement, a borrower or approved management agent may submit a request for replacement RA units. The request should contain all the material requested in paragraph V.A.1 of this exhibit and should be submitted no later than three (3) months prior to the expected full disbursement of obligated funds, to allow time for processing the request. The number of replacement units may not exceed the number of units that are expiring. Once replacement units have been requested, additional units may not be requested until Form FmHA 1944–51, "Multiple Family Housing Obligation Fund Analysis," is received obligating the replacement units. Form FmHA 1944–51 requesting the additional units must be coded sequentially as required in paragraph V.C.5.

3. The District Director will review the budget, Exhibit A–6, Form FmHA 1944–29, and Form FmHA 1944–25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 1944–25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B. *Projects to be Funded.*

1. Applicants requesting funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA 1944–25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. *State Director Action on Requests for Rental Assistance.*

Only the State Director or delegated members of the State Office staff may approve or disapprove RA requests.

1. *Approval Actions.* When the State Director determines that RA can be obligated or transferred, Part III of Form FmHA 1944–51 for obligation, or Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," for transfers, will be prepared and distributed according to the Forms Manual Insert (FMI). Form FmHA 1944–27, "Rental Assistance Agreement," will not be executed or amended until the obligation or transfer is verified by the Finance Office. The State Office will verify the obligation or transfer via the computer terminal, on the day following the request.

2. *Completing Agreements.* When the State Director verifies that RA units have been obligated or transferred by the Finance Office, the State Director will forward a copy of either Form FmHA 1944–51 or Form FmHA 1944–55 to the District Director. The District Director will complete Form FmHA 1944–27, and attach the appropriate copies of Form FmHA 1944–51 on Form FmHA 1944–55 according to the FMI.

a. *Initial Agreements.* The District Director will prepare the original and two copies of Form FmHA 1944–27. When the project does not have a Form FmHA 1944–7 in effect, the District Director will prepare an original and three copies. The District Director and the borrower will then execute the originals and all copies of Form FmHA 1944–27 and Form FmHA 1944–7. The forms will be distributed according to their FMIs.

b. *Replacement or Modified Agreements.* When an RA agreement initiated prior to May 1, 1985, is replaced or modified, a new Form FmHA 1944–27 will be prepared and

distributed according to the FMI. For every replacement or modification on or after May 1, 1985, the original and all copies of the affected RA agreement will be noted, assembled and distributed by the District Director according to the FMI.

3. *Modification of an Existing Agreement.* After any request for a change in the amount of RA has been obligated, a copy of Form FmHA 1944-51 or Form FmHA 1944-55 will be attached to Form FmHA 1944-27 distributed according to the FMI. A new Form FmHA 1944-7 is not required.

4. *Denial of Rental Assistance Request.* If RA cannot be provided, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights in accordance with subpart B of part 1900 of this chapter in all cases. Even when RA is not available from the State's allocation or the National Reserve, the borrower is entitled to review rights under subpart B of part 1900 of this chapter.

5. *Rental Assistance Agreement Numbers.*

a. Each RA agreement will be assigned a six digit Rental Assistance Agreement Number by the Approving Official as follows:

(1) First two digits—Fiscal Year (FY in which the funds were obligated, i.e., 85, 86, etc.)

(2) Second two digits—Initial obligation for the project will be coded 01. Renewal or "patch out" obligations will be coded sequentially starting with 02.

(3) Third two digits—All obligations will be coded 00.

b. RA Agreements with units obligated before FY 1985 will be coded as follows:

(1) First two digits—FY initial obligation was made on the project, i.e., 78, 79, 80, etc.

(2) Second two digits—Relate to the pre-AMAS conversion loan number to which the RA obligation was processed.

(3) Third two digits—Indicate the number of modifications plus 1. (RA Agreement with two modifications on September 30, 1984, will be designated "03.")

c. The Finance Office will track RA agreements and undisbursed balances by number.

VI. *Terms of the Rental Assistance Agreement.*

A. *Effective Date.* Each "Rental Assistance Agreement" will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal according to paragraph XVI of this exhibit, the effective date will be retroactive to the first day of the month in which the assistance was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive period.

B. *Term.*

1. *Twenty (20) Year Agreement.* Twenty (20) year agreements when authorized are restricted to new projects or modifications of existing twenty (20) year agreements. The agreement shall be effective for twenty (20) years from the effective date of the agreement. This agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a five (5) year period.

2. *Five (5) Year Agreement.* Five (5) year agreements may be used for operational projects, or for new projects when twenty (20) year units are not available. The agreement shall be effective for five (5) years from the effective date of the agreement. This five (5) year agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the five (5) year period.

3. *Modification of Agreements.* RA agreements may be modified:

a. To add or subtract RA units assigned to the project through obligation, through transfer from another RA agreement or as an incentive to avert prepayment.

b. To reinstate a suspended RA agreement to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the multiple family housing (MFH) program; or

c. To transfer a suspended RA agreement to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

4. *Amendment of Agreements.*

a. Any existing RA agreement executed prior to February 15, 1983, which will have a remaining obligation balance at the end of the 5-year or 20 year expiration date stated in section 9, "Term of the Agreement," may be modified by the use of Form FmHA 444-27A, "Amendment to Rental Assistance Agreement." The amended agreement will expire when the obligated funds are fully disbursed.

b. Any existing RA agreement containing an occupancy standard may be amended by mutual consent of the borrower and FmHA when a new occupancy policy for the project is approved according to paragraph VI.B.2 of Exhibit B of this subpart. To amend the agreement:

(1) Delete Section 5 of the original agreement and the borrower's copy and have the deletion dated and initialed by the appropriate FmHA official and the person(s) authorized to sign for the borrower.

(2) Type the following statement on the reverse of the original agreement and the borrower's copy and have the statement dated and initialed by the appropriate FmHA official and the person(s) authorized to sign for the borrower.

"Amended (date) ______ by authority of paragraphs VI.B.4. of Exhibit E and VI.B.2.a. of Exhibit B to subpart C of part 1930, chapter XVIII, title 7, Code of Federal Regulations."

5. *Replacement Agreements.* Replacement RA agreements for either 5-year or 20-year agreements will be for a five (5) year period. All requirements in paragraph VI.B.2. and 3. of this exhibit apply. Expiring RA agreements and replacement RA agreements may run concurrently for a short period so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

VII. *Recordkeeping Responsibilities.*

A. The Finance Officer (FO) will track the use of RA and ensure that RA is not disbursed or credited to a borrower's account in excess of the RA obligation. Quarterly and annually, the FO will provide the District Director with an RA payment and obligation status report for each project. The annual version of this report will be filed in Position 2 of the project case file and maintained indefinitely.

B. The District Director will notify the borrower to apply for replacement RA units when the RA Undisbursed Balance reaches a level sufficient to cover approximately 6 months of RA requests. This figure will be based on the project's average monthly requests for RA.

VIII. *Responsibilities of Borrower in Administering the Rental Assistance Program.* The borrower and management agent for each project receiving RA should fully understand the responsibilities and requirements of carrying out the program. The following guidelines will be followed:

A. RA payments will not be made directly to eligible tenants receiving RA except as specified in paragraph IX.A. of this exhibit. The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants. All other RA payments will be recorded as a credit to the tenant's monthly rental payment.

B. The borrower must submit Form FmHA 1944-8 for each tenant as required in paragraph VII.F. of Exhibit B of this subpart (Management Handbook).

C. The incomes reported by the tenants must be verified by the borrower in accordance with paragraph VII of Exhibit B of this subpart (Management Handbook).

D. Borrowers utilizing RA must comply with § 1930.124 of this subpart. RA will not be approved for a project until the operating budget has been approved by the FmHA State Office or the District Director. District Directors, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household. All leases must comply with the provisions of paragraph VIII of Exhibit B of this subpart (Management Handbook).

F. The borrower will be responsible to FmHA for any errors made in the administration of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of any incorrectly advanced RA funds. If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the Office of Inspector General according to subpart B of part 2012 (available in any FmHA office).

IX. *Handling Utility Allowances.*

A. *Payment of Utilities.*

1. When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and the portion of income cited in A.2. (a) or (b) or (c) of the

definition of Eligible Tenants in paragraph II of this exhibit.

2. When utilities are paid by the household receiving RA and the portion of income cited in A.2. (a) or (b) or (c) of the definition of Eligible Tenants in paragraph II of this exhibit is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and one of those limits of the household's adjusted monthly income.

3. In a project where the owner pays all utilities, the tenant rent will be the portion of income cited in A.2. (a) or (b) or (c) of the definition of Eligible Tenants in paragraph II of this exhibit up to the approved rent for the rental unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A-6 to subpart E of part 1944 of this chapter.

C. *Changes in Allowances.* The utility allowance should be reviewed annually and adjusted if there are substantial changes in utility and public service rates. Allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in changed rent paid by tenants will be processed according to Exhibit C of this subpart.

X. *Method of Payment of Rental Assistance to Borrower.*

A. *Regular monthly RA payments.*

1. *Borrower Responsibilities.*

a. Any RA due the borrower will be deducted from the balance of scheduled loan payments, any delinquent payments, and other charges due on Form FmHA 1944-29, and the remaining balance must be submitted to the District Office by check. If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, no additional payment is due from the borrower and an RA check for the excess will be issued by the Finance Office.

b. Each month the borrower must forward to the District Director a Form FmHA 1944-29. Any new Forms FmHA 1944-8 must be submitted to the District Office as required in Exhibit B of this subpart. Both forms must be prepared for each project according to the instruction attached to the respective forms.

2. *District Director Responsibilities.*

a. When new Forms FmHA 1944-8 are received, the District Director will:

(1) Review each Form FmHA 1944-8 and verify that the information contained on the form is complete and correctly computed based on information contained in the form.

b. When a Form FmHA 1944-29 is received, the District Director will:

(1) Review Form FmHA 1944-29 and assure that entries are supported by the current Form FmHA 1944-8.

(2) Enter the payment data via field office terminals as required in Exhibit A to subpart K of part 1951 of this chapter (available in any FmHA office).

c. The District Director should verify the accuracy of the borrower's servicing address shown on the Finance Office (FO) record. When the address shown is incorrect, corrections must be made on Automated Multi-Housing Accounting System (AMAS) screen M5A "Record Borrower/Project Data" via a field computer terminal.

B. When a project account is delinquent, the District Director should counsel with the borrower and develop a servicing plan in accordance with § 1965.85(b) of subpart B of part 1965 of this chapter. This plan should incorporate detailed provisions for continuing operation of the project and paying the account current.

1. As part of the servicing plan, the District Director may agree to releasing a portion of the monthly RA for project operation.

2. The RA Check may be released to the borrower according to the servicing plan.

C. An RA payment request must be based on actual occupancy as of the first day of the month.

XI. *Assigning Rental Assistance To Tenants.*

A. *New project.* Applications for occupancy should be accepted during the construction phase of the project after the preconstruction conference has been held and placed on a waiting list. During initial rent-up period, the following priorities will apply:

1. Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for applicant households who qualify for RA as defined in paragraph II of this exhibit, even if there are applications on other lists that applied earlier. Applications qualifying for RA will be considered according to the priority established by paragraph XI.B. of this exhibit, by-passing those applicants on the waiting list whose income is above the low-income limits for the area. The balance of the apartment units will be rented simultaneously to other applicants according to paragraph VI.E. of Exhibit B to this subpart.

2. If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants not eligible for RA, the borrower may consider requesting a transfer of unused RA units in accordance with paragraph XV.B.5. of this exhibit. Applicants not eligible for RA cannot be selected to occupy units initially reserved to be used with RA until unused RA units are transferred.

3. If there are still vacant units, those applicants by-passed because they did not qualify for RA will be considered for occupancy on a first-come-first-served basis.

B. *Operational RRH and RCH Projects.* To determine priority for assigning an available RA unit in an operational project, the latest Form FmHA 1944-29 for the project must be updated as of the date the unit is available, assuring that columns 3 through 9 are current and accurate.

1. *FIRST Priority* for assigning RA must always be given to eligible very low-income households in the following order:

a. Eligible *very low-income tenants* paying the highest percentage of adjusted annual income for approved shelter costs.

b. Eligible *very low-income applicants* from the project waiting list according to the order provided in paragraph VI. F. of Exhibit B to this subpart. No eligible tenant household in the project may be required to move from the project to allow an applicant on the waiting list who is eligible for RA, to move in.

2. *SECOND Priority* for assigning RA will be given to eligible households with low-income in the following order.

a. Eligible *low-income tenants* in the project paying the higher percentage of adjusted annual income for approved shelter cost.

b. Eligible *low-income applicants* from the project waiting list. Low-income applicants will be selected according to paragraph VI.F. of Exhibit B of this subpart, provided the borrower has satisfied the requirements of paragraph XI.C. of this exhibit.

3. *THIRD Priority* for RA will be given, with State Director approval, to occupancy *ineligible tenants* living in the project. The occupancy requirements of paragraph VI.B.2. of Exhibit B of this subpart must be met.

4. When the project has vacancies and RA is not available, an applicant who is eligible for RA may elect to accept occupancy without the benefit of RA. After occupancy, the household will be considered for RA according to paragraph XI.B. of this exhibit. If the applicant elects not to accept occupancy because RA is not available, their application will retain its priority date on the waiting list if the rental agent determines that a hardship to the applicant will exist according to paragraph VI.F.3. of Exhibit B of this subpart

5. Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for RA or the RA calculation formula shows a moderate income tenant that was initially eligible for RA as a low-income tenant still needs RA and there is a RA agreement in effect.

C. *Limits on Low-income RRH and RCH Applicants Who May Receive Occupancy and RA:*

1. When no more very low-income applicants are on the waiting list and RA is available, eligible low-income applicants may obtain occupancy and receive RA provided that:

a. For projects available for initial occupancy prior to November 30, 1983, no more when 25 percent of the vacant units receiving RA may become occupied by low-income tenants other than every low-income tenants.

b. For projects available for initial occupancy on or after November 30, 1983, no more than 5 percent of the vacant units receiving RA may become occupied by low-income tenants other than very low-income tenants.

2. The borrower may rent units and provide RA to other than very low-income applicants/tenants in excess of the percentage in paragraph XI.C.1. a. and b. respectively, when no more very low-income applicants/tenants are in the market area. The borrower must have in its file and available to FmHA or its representative documentation that shows the efforts made, and the facts used to determine that there are currently no more very low-income applicants in the market area.

D. *Operational LH Projects:* Tenants who meet the definitional requirements of domestic farm laborers found at § 1944.153 of subpart D of part 1944 of this chapter shall be

assigned RA in the following priority order within the subcategories of priority occupancy established by that subpart:

1. Very low-income

2. Low-income.

E. *Assigning Rental Assistance Other Than The First of The Month:*

1. When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately reassigned to another tenant or an applicant using the priorities given in paragraph XI. B. of this exhibit.

2. When RA is assigned to an applicant and the applicant initially enters the project on a day other than the first of the month, the applicant's tenant contribution for housing costs will be prorated for the remaining portion of the month the same as if the tenant was receiving RA. (Example: Basic rent of $200 and the tenants monthly contribution with RA would be $120, the prorate amount for ½ month would be $60.)

3. When RA is assigned to a tenant other than the first of the month, no adjustment to their tenant contribution on Form FmHA 1944–29 for that month will be made. The borrower will begin to receive reimbursement of RA for the tenant as of the first day of the next month.

4. No adjustment will be made on Form FmHA 1944–29 to request additional RA payment or to refund any excess RA payment or overage for the previous month when RA is reassigned other than the first of the month.

XII. *Rental Assistance Assigned to Wrong Household:* When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be canceled and reassigned. Incidents involving incorrect reporting are addressed in 7 CFR part 1951 subpart N. (FmHA Instruction 1951–N, available in any FmHA Office.)

A. Before the borrower notifies the tenant, the borrower or management agent shall review the case with the District Director. If the District Director verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due date after the end of the 30-day notice period. The tenant will also be notified in writing that:

1. The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

2. The RA granted in error will not be recaptured from the tenant.

3. The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal from the decision. If the tenant feels there is justification for further review the borrower must give the tenant appeal rights under subpart L of part 1944 of this chapter.

B. *Reassigning rental assistance:*

1. The RA unit will be reassigned to the household which was erroneously denied the RA unit. The assignment will be based on the Form FmHA 1944–29 from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

2. If the originally denied household now has RA, or is no longer a resident, the RA will be assigned based on a current Form FmHA 1944–29 and the priorities in paragraph XI of this exhibit.

XIII. *Rental Assistance Payment Cancellation:* When an RA check must be canceled, the following procedure will be followed:

A. *Return of the original rental assistance Treasury Check:* The District Office will prepare Form FmHA 1944–53, "Multiple Family Housing Cancellation of U.S. Treasury Check And/Or Obligation" as specified in the FMI and mail it to the MFH unit in the Finance Office.

B. *Return of all or a portion of the monthly rental assistance payment or refund of rental assistance previously advanced:* A check from the borrower made payable to Farmers Home Administration will be submitted to the MFH unit in the Finance Office on Form FmHA 1944–53, completed according to the FMI.

XIV. *Terminating Existing Rental Assistance Agreements Obligated in Prior and/or Current Fiscal Years.*

A. When a project's obligated funds are fully disbursed under any given RA agreement number, RA will be automatically terminated by the Finance Office and no further RA requests will process against the RA Agreement Number. The District Director must monitor these balances through field office terminals and Report No. 513–C. The District Office will modify Form FmHA 1944–27 according to the FMI to indicate that a termination has occurred. The District Director will notify the borrower in writing that the obligation under the RA agreement number has expired and the RA agreement number must be stricken from the agreement.

1. *For all RA obligations before FY 1985.* RA is considered fully disbursed by the Finance Office when all RA funds obligated before FY 1985 are disbursed.

2. *For all RA obligations after FY 1984.* RA is considered fully disbursed by the Finance Office when all RA funds obligated in a particular FY are disbursed. This includes RA transferred from a different MFH project.

3. When an RA agreement (Form FmHA 1944–27) consists of several different obligations (Form FmHA 1944–51, part III, or Form FmHA 1944–55) identified by different RA agreement numbers, and the obligations will not be fully disbursed at the same time, only those RA agreement numbers with fully disbursed obligation will be terminated.

B. *Prior to Full Disbursement of Obligated Funds:*

1. *Prior Fiscal Year Obligations.* Prior fiscal year (FY) obligations will not be terminated. They will be suspended by the State Director using procedures in paragraph XV of this exhibit.

2. *Current Fiscal Year Obligations.* The State Director is authorized to terminate RA agreements prior to the disbursement of obligated funds if the funds were obligated during the current FY. The undisbursed funds for the RA obligation will be returned to the current FY obligation authority.

XV. *Suspending or Transferring Existing Rental Assistance Agreements.*

A. RA may be suspended or transferred according to the requirements for each situation described in paragraph XV.B. of this exhibit and the following:

1. *Suspension.*

a. The State Director may approve a suspension of a project's RA agreement and obligation as a result of the servicing actions described in paragraph XV.B. 2., 3., and 4. of this Exhibit. The State Director will maintain records and control of the suspended RA.

b. The District Director will notify the borrower in writing.

c. With a suspend code on the project record, entered by the State Director through the AMAS M5A Screen, the Finance Office will suspend all RA payments to the affected project.

d. After suspension, no RA payments will be processed for the affected project.

e. The State Director may reinstate the RA to the same borrower in the same project by removing the suspense code from the M5A screen through field office terminals.

2. *Transfer.*

a. Only the State Director may approve an RA transfer.

b. RA may be transferred to any borrower with an RA eligible project according to the priorities established by this exhibit or the National Office.

c. The amount of RA which may be transferred will be determined by the number of RA units in the agreement and the undisbursed balance for the agreement. The dollar value of each RA unit being transferred will be determined automatically by the AMAS system as of the effective date of the transfer approved by the State Director.

d. RA units identified by different RA Agreement numbers may be transferred. New RA Agreement numbers should be assigned according to the FMI for Form FmHA 1944–55.

e. All or any portion of the units in an RA Agreement with an undisbursed balance may be transferred by the State Director.

f. When the State Director approves an RA transfer, Form FmHA 1944–55 completed according to the FMI, will be used to notify the Finance Office except as noted in paragraph XV.B.1. of this exhibit.

g. Form FmHA 1944–27, with Form FmHA 1944–55 attached, will be completed according to the FMI for each transferee. The transferee may use the transferred units effective the first day of the month in which the transfer is approved.

h. The transferor's RA agreement will be modified by attaching a copy of Form FmHA 1944–55 according to the FMI to indicate that a portion of the agreement has been transferred. When all the RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

B. *RA may be suspended and/or transferred in the following situations according to the following directions:*

1. *RA transfer accompanying a loan transfer.* When a loan is transferred to an eligible borrower, the transferee may assume the transferor's RA agreement. The RA will be transferred using Form FmHA 1944–55 which will be forwarded to the Finance Office with Form FmHA 1965–9, "Multiple Family Housing Assumption Agreement," as required in § 1965.65(c)(11) of subpart B of part 1965 of this chapter.

2. *Suspension and transfer after a voluntary conveyance or foreclosure sale.* When a project with RA is voluntarily conveyed to the Government or acquired by foreclosure sale, the RA will be suspended by the State Office by putting a Suspend Code on the conveyed project account before forwarding to the Finance Office Form 1965–19 "Multiple Family Housing Advice of Mortgaged Real Estate Acquired." If the project is sold through a credit sale within the program, the suspended RA may be transferred to the project's new borrower, or a different project if it is not needed.

a. *Transfer with a credit sale.* The transfer will be accomplished by attaching a copy of Form FmHA 1965–20 "Multiple Family Housing Advice of Mortgaged Real Estate Sold," when it is sent to the Finance Office.

b. *Transfer to different project without a credit sale.* When the suspended RA is not needed by the new borrower after disposition of the acquired project, the RA should be transferred as provided in paragraph A.2.

3. *Suspension and transfer after a liquidation or prepayment.*

a. When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be suspended and, subsequently, transferred to a different FmHA financed project in accordance with paragraph B.3.b., if applicable, or if not, to another project at the State Director's discretion.

b. When a tenant receiving RA is, or will be, displaced from an FmHA project due to prepayment or liquidation, the RA the tenant was receiving will be transferred, or suspended and transferred, to any other FmHA project, regardless of location, to which the displaced tenant moves. That tenant will be given first priority for a unit of RA, regardless of other priorities for the RA, if all the following conditions are met:

(1) The borrower is eligible to receive and administer RA.

(2) The tenant is eligible to occupy the project and to receive RA.

(3) The tenant had taken all the following steps to insure eligibility to receive priority for the unit of RA:

(i) Had been placed on at least one waiting list for a FmHA project with a Letter of Priority Entitlement.

(ii) Moved to the project as soon as the name was reached on a waiting list, even if it meant temporarily occupying an ineligible unit. The ineligible unit may not differ from the one for which the tenant is eligible by more than one bedroom.

(iii) Moved to an eligible unit as soon as one was available.

(4) The RA has not previously been transferred for the tenant's current displacement.

c. Procedures for transferring RA and modifying RA agreements outlined in paragraphs V.C. and XV.A.2. of this exhibit will be followed, but the receiving project borrower need not submit Form FmHA 1944–25 if the RA was received as a result of the occupancy of a displaced tenant.

4. *Suspension and transfer or reinstatement due to a servicing action.*

a. When servicing a project's account according to § 1965.85 of subpart B of part 1965 of this chapter and the account is accelerated, the RA will be suspended and either:

(1) Transferred with the project to a new borrower when all appeals and redemption periods of the defaulting borrower have expired and a credit sale is to be completed, or

(2) Transferred to a different project if the defaulting project is subsequently sold outside the program, or

(3) Reinstated to the same project when the defaults are corrected and the State Director reinstates the borrower's account.

b. The borrower will be apprised of the appeal rights available under subpart B of part 1900 of this chapter upon notification of the pending suspension. The suspension will not be effective until these appeal rights have been exhausted.

5. *Transfer of unused RA.* When RA is unused after initial rent-up and not needed because of a lack of eligible potential tenants in the area or reluctance on the borrower's part to use RA, all or a portion of it may be transferred when the State Director determines that the following conditions have been met:

a. The borrower's request for transfer demonstrates that:

(1) The original market survey completed according to Exhibit A–7 of subpart E of part 1944 of this chapter clearly indicates no significant need for rental housing by households in the market area that would require RA for occupancy, and that there are no eligible tenants in the project not receiving RA or there are no eligible applicants on the waiting list who could use RA when obtaining occupancy. The State Director may require a new market survey for the project to make this determination if the original market survey does not adequately address potential very low-income tenants in the area, or does not reflect current market conditions.

(2) When the market survey indicates that there is a significant need for rental housing by households in the market area that would have required RA for occupancy, but all or a substantial portion of the RA units available remain unused after a two-year period since initial availability, the borrower must demonstrate that:

(i) A good faith effort was made to market the project to RA eligible applicants;

(ii) The waiting list does not contain RA eligible applicants and the project is not occupied by RA eligible tenants who do not receive RA; and

(iii) Project management has not used a policy of discouraging RA eligible households from applying for or obtaining tenancy in the project.

(3) Rent increases anticipated for the following two years will not prompt a request for RA according to the provision of Exhibit C of this subpart.

b. The District Director recommends the RA transfer after reviewing documentation submitted by the borrower and finding that the applicable conditions of paragraph XV.B.5 of this exhibit have been met.

c. If, after the end of the initial year of a Rental Assistance Agreement, the borrower has not used a portion of the RA units for any ensuing consecutive 12-month period, the State Director may transfer the number of unused units, minus at least one, to another project without the borrower's request. This would apply only if the current agreement is on Form FmHA 1944–27 and when:

(1) The borrower has made the efforts described in paragraphs XV.B.5a (2)(1) (i), (ii), and (iii) to market the project to tenants needing RA.

(2) The District Director has reviewed the project occupancy list, waiting list, and any other data available and verified that there is no apparent RA needs in the project.

(3) The State Director has notified the borrower at least 30 days in advance of FmHA's intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with subpart B of part 1900 of this chapter.

(4) If the borrower appeals the decision, the appeal is resolved in accordance with subpart B of part 1900 of this chapter, before any transfer action is taken.

(5) The transfer will be completed in accordance with paragraph XV.A.2. of this exhibit.

6. *Transfer due to an unclosable loan.* When RA will be unused because the loan to which it was obligated will not be closed, or the RA agreement is not signed, the RA obligation may not be transferred except as provided under the conditions of § 1944.235(b) of this chapter. However, if this situation occurs during the same FY of obligation, the obligation should be cancelled and reobligated immediately using current authorities. Obligations from prior fiscal year must be cancelled and will be lost unless the conditions of § 1944.235(b) of subpart E of part 1944 of this chapter exist.

XVI. *Rights for Appeal if Rental Assistance is not Granted or is Cancelled by Farmers Home Administration.*

A. Borrowers who have requested RA in writing and are denied such assistance (whether in whole or in part) by FmHA, or when RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA and will be notified of their appeal rights in accordance with supbart B of part 1900 of this chapter.

B. If at any time a borrower or a household is granted RA under an appeal, the borrower or household will receive the next available RA unit.

C. Borrower denial of RA to tenants will be handled according to subpart L of part 1944 of this chapter.

XVII. *Forms and Exhibits.* Exhibit A–6 to subpart E of part 1944 of this chapter and Form FmHA 1944–7 are to be used in determining the amount of RA to be provided.

Exhibit F—Supervisory, Security Inspection and Management Visit Preparation Worksheet; Multiple Family Housing Projects

Date last site inspection ______
Date last compliance review ______

Profit .... ______
Limited Profit .... ______
Nonprofit .... ______
Cooperative .... ______
....

* * * * *

Subsidy:
RA ( ) No. Units ( ); Section 8 ( ) No. Units ( )
Other ______
No. Units ( )

Preparation Date ______
RRH ______ RCH ______ LH ______
(Refer to AMAS M1BI, M1FI, M4YI, M5AI, and M5BI screens, Report RC 513-C and MTFS to complete the following information)
Borrower ______

Individual .... ______
Partnership .... ______
Corporation .... ______
Other .... ______
....

Add'l. RA units needed (No. tenants/members with rent/occupancy charge overburden) ______.
Original RA amount $______ Current RA balance ______

County & State ______
Case No. ______
Proj. No. ______ Tax Credit (Y/N) ______
Project Location ______

* * * * *

Plan I .... ______
Plan I S8 .... ______
Plan II .... ______
Plan IIRA .... ______
RA .... ______

RA renewal is needed ( ) 0–6 M, ( ) 6–12 M, ( ) more than 12 M

* * * * *

No BR	Rent/Occupancy Charge	Struc-ture	Util. allow	No. of units	Vacancies
______ BR	______	______	______	....	______
______ BR	______	______	______	....	______
______ BR	______	______	______	....	______
______ BR	______	______	______	....	______
Date Apr'd	______	______	______	....	Total ______

Special Servicing
Rents: yes ( ) no ( )
Special Market
Rents (SMR): yes ( ) no ( )

* * * * *

Preparation Checklist: (Date completed)
______ Select tenants/members to review by random sample formula.
______ Send list to St. Off. for State Explmt Office verification.
______ Send out questionnaire to selected tenants/members. (Form attached) (Optional)
______ Review file and list selected tenants/members on visit sheets.
______ Final report to file, Borrower, HUD, etc.

The latest Affirmative Fair Housing Marketing Plan (AFHMP) was signed by the borrower on ______ and (was) (was not) signed by FmHA. The AFHMP (needs) (does not need) to be updated at this time. (Compare file copy with posted copy during site visit.)

What major problems discovered during or since last review have not been resolved? ______

______

What are the capital expenditure approvals since last review and have they been satisfactorily completed? Have any unauthorized capital expenditures been made since last review? ______

______

______

What is the status of any servicing actions? What servicing actions need to be addressed during this preparation and the site visit? ______

______

List any other concerns to be addressed during this review and site visit, i.e. development status, reports, management plan update, etc. and indicate plan of action for each. ______

______

______

Suggested Random Sample Process and Formula for Tenant or Member File Review

1. Decide on size of sample to use (10%, 25%, 50%, etc.) This percentage will establish the numerical sequence to be selected.

2. Use the last digit of current calendar year for starting place.

3. Formula: $A \times B = C$; $A - C = D$.

A = total number of units in the project
B = percentage of units to be reviewed
C = number to review
D = numerical interval from starting point

(Example: Year is 1992; use 2 to establish the starting place. You have decided to use 25% and your project has 36 units.)

A = 36 (A) 36 × (B) 25% = (C) 9
B = 25%
C = 9 (A) 36 − (C) 9 = (D) 4.

Go to the second occupied unit on the rent roll as a starting place, select that unit and every fourth occupied unit, wrapping around to the beginning of the rent roll if necessary to get the full sample number of 9.

Note 1: Additional sampling as needed will be made to ensure that tenants or members from all income categories (V, L, and M) and unusual circumstances are selected.

Note 2: If a different random sample process and formula is used, describe it below or attach it to this documentation.

Sample Letter of Notification to Selected Tenants/Members

Note: Use of this letter and the accompanying questionnaire is strictly OPTIONAL by the FmHA District Office. When used, the letter and questionnaire should be sent only to those tenants or members selected by the random sample process to minimize cost and public burden.

Date

Name
Address
City, St.

Dear Tenant:

Farmers Home Administration (FmHA) financed the building of the apartment where you now live, and at least every three years, FmHA makes a site inspection.

Prior to our visit which will be held on ______, we will appreciate your taking a

few minutes to complete the attached questionnaire and return it to our office in the enclosed self-addressed and pre-metered envelope. This questionnaire will be held in the strictest confidence.

Apartments to be inspected are selected on a random basis and your apartment may not be selected; however, if you wish us to specifically visit your apartment, please indicate this on the questionnaire.

If you have any questions regarding your residence, we will be glad to answer them during the time of the visit.

Sincerely,

District (Staff Title)
Attachment

Tenant/Member Questionnaire for Supervisory Visits (For optional use by FmHA)

Apartment Name

Tenant/Member Name

Address

(Your name and address are optional: however, if you would like any particular questions answered, you will need to give us your name.)

1. Do you have any problems relating to your residence here?

2. How is the maintenance? Do you know who to call if you have any problems? Is emergency maintenance service available after hours? Are emergency items acted upon quickly?

3. How long have you lived here?

4. How many people live in your apartment?

5. Do you understand the purpose of the tenant certification? Explain.

6. What information is on the form when you sign it AND has it been completed before you sign it?

7. How was your income verified? (That is, how did the site manager confirm your income and was it done before you signed the tenant certification?)

8. How often is your income reported to the manager? What do you do if it changes?

9. Whose income is used to determine the rent/occupancy charge if more than one in your household is working or receiving an income?

10. How do you know what rent/occupancy charge to pay? How much are you presently paying for rent or occupancy charge?

11. Do you have a copy of your lease or occupancy agreement? Is the tenant certification attached? Is the utility allowance sheet attached?

12. How much do you pay for utilities (average)?

13. Does your smoke alarm work? Is the exterior lighting adequate for protection and visual security?

14. What security problems are you having, if any?

IF YOU HAVE ANY QUESTIONS OR COMMENTS, PLEASE USE THE BACK OF THIS SHEET. We appreciate your cooperation in returning this form completed.

Exhibit G—Supervisory Visit Checklist for Multiple Family Housing Projects

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Date Prepared:

Section I: Supervisory Visit

A. *Questions for the Site Manager*

What training did you receive regarding FmHA requirements?

How are you compensated? How much? Date Hired?

1. *Tenant or Member Files*

How do you verify household income?

Whose income and what source of income do you use on the Form FmHA 1944–8?

When do you verify tenant or member income? How often?

Are there any expired tenant certifications?

To what degree do you believe information provided by a tenant or member/applicant is accurate and complete?

How do you determine the amount of rent each tenant or member pays?

What utilities are included in the rent; paid by the tenant or member?

When did you last verify actual costs for tenant or member utilities.

What is the system for tracking tenant or member monthly rent payments? Do you collect the rent payments? Do you accept cash payment? (Check receipt book.)

How do you determine what size unit a Family can occupy? What do you tell the Family if there is only an incorrect sized unit available? (Does Management Plan contain an occupancy policy?)

Who prepares the lease? (Spot-check leases for proper rents/occupancy charges/utility allowances, required lease clauses and signatures.

How long do you retain tenant or member files on move-out?

Where are tenant files kept? (Spot-check files for contents.)

Have there been any tenant appeals since our last visit?

2. *Maintenance Items*

Are maintenance employees provided with written schedules for routine work (i.e. mowing lawns, cleaning trash areas, etc.)?

Is emergency maintenance service available after regular working hours?

What is the procedure for taking care of repairs? Do you follow up? Does the tenant or member sign off on the request?

How often do you do periodic inspections?

How long does it take for turn-over of vacated units?

Are purchase orders and work orders required of maintenance staff?

How soon are work requests responded to?

Does management have a system for receiving, assigning, completing and billing work orders and for establishing work priorities?

Are special services (extermination, snow removal) provided regularly/as necessary? How do you notify tenants/members? Are professional services used?

Is there a schedule for regular exterior and interior painting? What is it? (Management plan requirements ______).

3. *Security Services*

Who has access to the master keys?

Do you charge to unlock a tenant's or member's door when they have been locked out? How much is charged?

What type of security service is available?

______Tenant/member patrol
______Paid car patrol
______None
______Paid on-site guard
______Police Car Patrols
(______Is any needed?)

B. *Waiting Lists and Tenant/Member Selection*

Where are the apartments advertised? How often?

Where are applications received? Project? Other?

Is there a master list of all applications on hand?

Is everyone allowed to apply?

Does the waiting list contain the information on the FmHA Sample Waiting List? What is missing?

Are priorities for selection maintained and followed?

Is the ethnic and racial composition of the project in balance with the population in the marketing area by race/nation origin?

When there is a vacancy, is the first person listed within the proper priority selected to move in?

When there is a vacancy, are ineligibles moved to the proper size unit first?

Are ineligible tenants/members placed on a unit transfer list?

Is there documentation of applicant contacts?

If an applicant is removed from the list, is it documented in writing to the applicant? (Check withdrawn and rejected files for letters to the applicant. Rejected applicants must have appeal rights given to them.)

Are rejected/withdrawn applications still on hand since last compliance review?

Are there any applicants with a Letter of Priority?

In cooperatives: Does the board of directors consider and act on new member applications?

Are applicants screened for suitability before being placed on the waiting list?

Is there a signed "What is Cooperative Housing?" form indicating the member recognizes and accepts the responsibilities associated with cooperative living?

C. Rental Assistance (RA)

Are Forms FmHA 1944–29 updated before RA is assigned?

Are all households qualified for RA listed on the updated 1944–29?

Is percentage of income paid for shelter based on rent/occupancy charge plus utilities?

Is assignment of RA made according to the priorities in Exhibit E to FmHA Instruction 1930–C?

Are occupants in correctly sized units?

Are additional RA units needed?

How many occupants are experiencing rent/occupancy charge overburden?

D. Tenant/Member Grievance and Appeals Procedure

Are tenants/members being informed of their appeal rights? (Determine this by tenant/member interview.)

Is a copy of FmHA Instruction 1944-L posted for review by tenants/members?

Is there a standing hearing panel for the project?

Are records maintained of settlements and hearings?

Is the borrower responsive to occupant grievances?

E. Review of Tenant/Member Comments

(If questionnaire was used, attach it to the back of this management review.)

F. Tenant/Member File Maintenance

(Attach any notes and comments taken from review of selected tenant/member files.)

Section II: Security Inspection

A. Posters and Signs, Etc.

Is there a project sign? ________

Does it have an Equal Housing Logo? ________

Is there a Handicapped Logo? ________

Is there a sign indicating where to apply? ________

Are Equal Housing Opportunity posters visible? ________

Are "* * * and Justice for All" posters visible? ________

Is the Affirmative Fair Housing Marketing Plan available for review? ________

Date signed by State Director ________

Is advertising documented? (Attach copies) ________

Is 1944-L permanently posted for tenant review? ________

Comments:

B. General Physical Condition

(Use part C for Individual Units) (Place (Y) (N) (N/A) in space provided and show projected date of correction)

		Date
Are grounds and landscaping in acceptable condition?	________	________
Are exterior painted surfaces such as stairs, railings, porches, windows, doors, etc. free from cracking, scaling, chipping, peeling or loose paint?	________	________
Is the project free of broken windows, broken light fixtures, globes or seriously damaged exterior doors?	________	________
Are hallways, stairs, elevators, laundry rooms, garbage areas and other public areas clean?	________	________
Is playground equipment in safe and acceptable condition?	________	________
Is other equipment adequate? (Trash bins, laundry, smoke alarms, fire extinguishers, etc.)	________	________
Is the project free from obvious fire/safety/health hazards or housing code violations?	________	________
Have repairs or corrections identified on last physical inspection been satisfactorily completed?	________	________
Are all roof gutters and downspouts cleaned and properly maintained?	________	________
Are parking lot surfaces, sidewalks, and storm drainage systems functioning or in good repair?	________	________
In Cooperatives:		
Are cooperative members performing maintenance functions?	________	________
What types of maintenance functions are contracted out?	________	________

The maintenance program can be listed as:

________ Preventive

________ Corrective

________ Deferred

Comments:

C. Unit Check List Security Inspections

Unit No. Tenant name	No. BR/No. indiv	Date occup. rent amount util allow	Comments
		\$____ \$____	
		\$____ \$____	
		\$____ \$____	
		\$____ \$____	
		\$____ \$____	
		\$____ \$____	
		\$____ \$____	
		\$____ \$____	

SECTION III: Running Record Comments

Date of Review ______________________

On the above date, a Supervisory Visit, Security Inspection, and Compliance Review was conducted. The items listed below are the major findings of the inspection and management review and any follow-up actions required by the District Office:

Rating

Above Average ______ Satisfactory ______
Below Average ______ Unsat. ______

Next follow-up needed (Letter, telephone, etc.)

____

Next scheduled review ______________________

Section IV: Borrower Operations Review

Date ______________________

A. Management

Is there an identity of interest between the owner and the management person/firm? ______

If yes, are management services and cost for these services comparable to "arms-length" ______

If no, describe benefits or detriments? ______

____

____

Is there an identity of interest between the owner or management person/firm and the project service providers? ______

If yes, is the level of service and cost for that service comparable to "arms-length" service providers? ______

If no, describe benefits or detriments. ______

____

____

Is there an approved management Plan? ______

Does it cover the requirements of Exhibit B-1 of FmHA Instruction 1930-C? ______

Has the management plan been reviewed/updated/renewed within the past two years? ______

Is the borrower following the plan? ______

If not, describe. ______

____

____

Is there an approved and current management agreement? ______

If an entity borrower, is an annual list of owners reported as required? ______

Has there been a change in management partners or stockholders not known to FmHA? ______

Is adequate project fidelity coverage and hazard insurance in effect? ______

In Cooperatives:

Is the borrower cooperative working with FmHA? ______

Does the board of directors hold monthly meetings? ______

Is there an agreement with the adviser? ______

Does the adviser to the board attend each meeting? ______

Does it appear that the board has control over the cooperative's operations? ______

Does the cooperative have active committees? ______

What committees and how many members on each? ______

____

____

____

____

____

____

How often do the committees meet? ______

Does a board member attend committee meetings? ______

Are management agreements and contracts being followed? ______

Comments:

B. Budget and Accounting System

When was the last budget approved by FmHA? ______

Is the budget being followed? ______

Is there a special servicing budget or SMR with a work-out plan? ______

Are accounts being kept according to Exhibit B of FmHA Instruction 1930-C? ______

Are the accounts current? Describe. ______

____

Are the funds protected by a Federal agency or bank collateral? ______

Is a cash or accrual system of accounting used? ______

At what location is the bookkeeping kept? ______

Is this a consolidated project in operation and bookkeeping? ______

If so, have the loan agreements been consolidated? ______

What type of bookkeeping training is being given to the cooperative treasurer? ______

Comments:

C. Audits (and Verification of Accounts)

Is an audit required? ______

If one was not required, is a proper verification of accounts made by an unassociated competent individual or committee? ______

The last audit covered what fiscal year? ______

Did that audit meet current FmHA Audit Program requirements? ______

What internal control deficiencies were noted?

What bookkeeping and accounting deficiencies were noted? ______

What is the borrower's plan to overcome these deficiencies? ______

____

____

Exhibit H—Interest Credits on Insured RRH and RCH Loans

I. *Purpose:* This exhibit outlines the policies and conditions under which interest credits will be made on insured rural rental housing (RRH) and rural cooperative housing (RCH) loans.

II. *Definitions:* As used in this exhibit:

A. *Interest Credit* is the amount of assistance the Farmers Home Administration (FmHA) may give a borrower toward making its payments on an insured RRH or RCH loan.

B. *Interest Credit and Rental Assistance (RA) Agreement* is an agreement between FmHA and the borrower providing for interest credits and/or RA for RRH or RCH loans. This agreement will be on Form FmHA 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement."

C. *Project* is the total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

D. *Basic Rent* is determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum and covering budgeted project expenses. Basic rent also means basic occupancy charge.

E. *Note Rate Rental* is a unit rental charge determined on the basis of operating the project with payments of principal and interest which the borrower is obligated to pay under the terms of the promissory note and meet budgeted project expenses. Note rate rental also means note rate occupancy charge in an RCH housing project.

F. *Overage* is the amount by which total rental or occupancy charge payments paid or to be paid by the tenants or members of a project exceed the total basic monthly charge.

G. *Surcharge* is 25 percent of the established rent in a Plan I project which is added to the rent of an ineligible tenant or member.

III. *Eligibility:* Borrowers may receive interests credits provided the loan (1) was

made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 30 years or more; and (3) meets the other requirements of this exhibit subject to the following limitations:

A. Plan I will be only to broadly-based nonprofit corporations and consumer cooperatives. Except for subsequent loans to projects approved before August 1, 1968, Plan I interest credit is no longer available. All borrowers already operating on Plan I may continue operating under it according to the applicable requirements of this exhibit and of this subpart. A subsequent loan on a Plan I project approved after August 1, 1968, will require the project to convert to Plan II.

B. Plan II will be available to broadly-based nonprofit corporations, cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

C. Units must be ready for occupancy (decent, safe, and sanitary) to qualify for interest credit.

IV. *Options of Borrowers:* An eligible borrower operating under Plan I or Plan II, as described below, will determine interest credits on its loan in the respective manner indicated.

A. *Plan I.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to very low- or low-income nonelderly and very low-, low- and moderate-income elderly, disabled or handicapped persons.

2. A borrower under Plan I generally must:

a. Determine that there is a firm market and continuing demand for rental housing by persons within the applicable income limits.

b. Prepare a budget on the basis of a 3 percent loan.

c. Determine rentals to be charged.

d. Determine adjusted personal income of each tenant or member and have each tenant or member complete Form 1944-8, "Tenant Certification." Determine the monthly rent or occupancy charge to be paid by each tenant or member household.

B. *Plan II.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to households, including elderly, disabled and handicapped persons of very low, low and moderate incomes. Under Plan II, interest credits are based on the cost of operating the project and the size and income of the household.

2. A borrower under Plan II generally must:

a. Prepare one budget form that reflects two rent levels; the first level on the basis of a 1 percent interest rate loan to determine basic rental; the second level on the basis of a loan at the interest rate shown in the promissory note to determine note rate rental.

b. Determine both basic rental and note rate rental for the different units based on the two budgets. (See Exhibit H-1.)

c. Determine adjusted personal income of each tenant or member and have each tenant or member complete Form FmHA 1944-8. Determine the monthly rent or occupancy charge to be paid by each tenant or member household.

d. Determine the required monthly payment on the loan at 1 percent interest plus overage for the month for the total units. The amount of the project payment will be entered on Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance."

V. *Determining the Amount of Payment:*

A. *For Plan I.* The amount of payment will be determined by using the amortization factor for a payment at a 3 percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B. *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a 1 percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all overage.

C. *For the Project.* The payment amount for all loans on the project will be added together to determine the project payment. The amount due FmHA will also include all overage, surcharges, late fees, audit receivables, and cost item charges.

VI. *Special Conditions:*

A. *Leases or Occupancy Agreements.* Borrowers participating in the interest credit program must have an FmHA approved lease or occupancy agreement with the assisted household. Leases and occupancy agreements must comply with the requirements of paragraph VIII of Exhibit B to this subpart.

B. *Rental Surcharges to Ineligible Tenants.* If a unit is rented in accordance with the provisions of paragraph VI A of this exhibit to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1. Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for $100 per month, this ineligible tenant would pay $125 per month. The 25 percent surcharge, or $25 in this illustration, would be paid on the account and would be included with, but in addition to, the regular payment on the loan.

2. Under Plan II, be charged the note rate rental.

3. In LH housing, be charged the lessor of tenant contribution determined by Form FmHA 1944-8, or the prevailing rental rate for the area, as determined by the Agency, based on the best information available.

C. *Vacancies.*

1. When all construction is not completed but some units are ready for occupancy and the contractor consents in writing to permit occupancy, the State Director may authorize the occupancy of those completed units to eligible tenants or members at the rent or occupancy charge they would be paying as if the Amortization Effective Date (AED) and subsidy levels had been established. A prerent-up or preoccupancy conference is required before marketing and rent-up begins. All income generated must be deposited in the General Operating Account and used for management and operation of the units except for member's patronage capital contributions.

2. RRH units rendered unusable due to fire, natural cause, or other damage requiring more than 60 days to repair or replace shall be immediately assumed to be rented or occupied at the monthly note rate rental or occupancy charge rate. (i.e. full overage for such units will be paid by the borrower until the units are again ready for occupancy.)

3. Rural rental or cooperative housing units vacant for lack of tenant or member applications on the waiting list or for repair not associated with No. 2 above shall be assumed to be charged at the basic rent.

D. *Interest Credit for Tenants in Projects under the Department of Housing and Urban Development (HUD) Housing Assistance Payment Program of FmHA Rental Assistance.* When any rental units in an RRH project are leased under the new construction Section 8 program, Form HUD 50059, "Certification and Recertification of Tenant Eligibility," or other acceptable HUD Form will be completed. When any rental units in an RRH project are leased under the FmHA RA program, Form FmHA 1944-8 will be completed.

E. *Special Cases.* Situations not covered by this Exhibit or Exhibit E to this subpart will be handled individually with instructions from the National Office.

F. *Understanding Eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing. Instructions for tenant or member eligibility are in paragraph VI. B. of Exhibit B of this subpart

VII. *Execution of Agreements:*

A. *Interest Credit and Rental Assistance Agreement.*

1. *Multiple Advance Loans.* Interest credit may become effective the first day of the month following substantial completion of construction when the project is ready for full operation, which is the AED. When the District Director determines that the project is ready for full operation, the borrower and the District Director should execute Form FmHA 1944-7. A separate Form FmHA 1944-7 will be executed for each loan on the project.

2. *Interim Financing and Servicing.* Effective dates for interim financed loans and servicing action will be according to the Form Manual Insert (FMI) for Form FmHA 1944-7.

B. *Change in Interest Credit Plan.* A borrower under Plan I may change, if it can meet the requirements of the other plan, by executing a new Interest Credit and Rental Assistance Agreement.

C. *Borrowers Who Are Not Receiving Interest Credit.* If an eligible borrower did not execute a Form FmHA 1944-7 according to paragraph VII A of this exhibit, interest credit may be instituted at any time during the life of the loan provided the borrower agrees to the requirements of Form FmHA 1944-7 and this exhibit. When Form FmHA 1944-7 is executed, it will be effective for the first of the month in which the Form FmHA 1944-7 is executed.

D. *Borrowers Who Have Had Interest Credit Terminated.*

1. If an Interest Credit Agreement has been terminated because the benefits were not needed and circumstances change to where an interest credit is again needed, a new agreement may be entered into.

2. If an Interest Credit Agreement has been terminated because of the borrower's failure

to comply with requirements and the appropriate corrective actions have been accomplished, a new agreement mav be entered into.

VII. *Tenant or Member Certification:* Tenant or member certification and recertification for interest credit borrowers will be performed in accordance with paragraph VII of Exhibit B to this subpart.

IX. *Project Payments:* With each payment made, the borrower will complete Form FmHA 1944–29. The FmHA representative handling the transmittal to the Finance Office will transmit the payments according to FmHA Instruction 1951–B and Exhibit A to FmHA Instruction 1951–K.

A. *Plan I.*

1. The borrower will make monthly payments in an amount necessary to repay the project loans as if the loans carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this exhibit, the surcharge will be included and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX.A.2. of this exhibit.

2. When a payment is made for any month that involves a rental surcharge, Form FmHA 1944–29 will be completed with the amount of the surcharge being inserted in the spaces provided. This form will be completed and the amount shown and will be charged to the project account regardless of whether the surcharge is actually collected by the borrower.

B. *Plan II.* The borrower will make monthly payments as though the project notes were written at a 1 percent interest rate plus any overage due and payable whether or not collected from the tenant or member.

X. *Servicing:* Handling of interest credits when servicing a project's accounts according to § 1965.85 of subpart B of part 1965 of this chapter will be handled according to the applicable parts of subpart A of part 1955 of this chapter. Any unusual cases that cannot be serviced in accordance with these sections should be submitted to the National Office with the State Director's recommendations.

Exhibit H–1—Example of Interest Credit Determination for RRH or RCH Projects (Plan II)

\$260,000 Loan—Approved During 1987 Fiscal Year

Project Contains Four 1-Bedroom Units (600 sq. ft. each) and Four 2-Bedroom Units (700 sq. ft. each)

Total Floor Area=5200 sq. ft.

Budget for note rate rent**	Budget for basic rent**
Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable—\$10,560.	Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable—\$10,560.
Loan repayment at 9½% interest: \$260 M×\$95.88<b \$24,929.	Loan repayment at 1% interest: \$260 M×\$25.44<b \$6,615.
Total Annual Cost \$35,489.	Total Annual Cost \$17,175.
\$35,489: 12=\$2958* cost/month.	\$17,175: 12=\$1432* cost/month.
One bedroom rent: 600/ 5200=.1154× 2958=341.35.	One bedroom rent: 600/ 5200=.1154×1432= 165.25.
Two bedroom rent: 700/ 5200=.1346× 2958=398.15.	Two bedroom rent: 700/ 5200=.1346×1432= 192.75.
(341.35×4)+(398.15× 4)=\$2,958 monthly income.	(165.25×4)+(192.75×4)= \$1432 monthly income.
\$35,489−12=\$2958* cost/mo.	\$17,175−12=\$1432* cost/mo

* Rounded to the nearest dollar.

** In cooperatives, the term "rent" shall mean "occupancy charge."

a. One budget form reflecting two rent levels must be prepared; one level for the note rate rent and another level for the basic rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not itemized.)

b. Factor for 50 years using monthly installments. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

Exhibit I—RRH Loans and the HUD Section 8 Housing Assistance Payment and Housing Voucher Programs (Existing Units)

I. *General.* This exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of existing section 515 Rural Rental Housing (RRH) units and the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payment and Housing Voucher Programs.

II. *Applicability.* All FmHA RRH borrowers are authorized to utilize the procedure outlined in this exhibit and the HUD Section 8 Housing Assistance Payments Program or the Housing Voucher Program for existing housing as outlined in HUD's regulations 24 CFR part 882 and 24 CFR part 887 (as amended) respectively. To promote the use of these programs with existing projects, the following action should be taken:

A. District Directors should inform all RRH borrowers operating in the area of their jurisdiction of the contents of this exhibit.

B. The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 30 percent of its income for rent and utilities. Therefore, RRH borrowers should advise tenants who are paying more than 30 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. Section 8 assistance for existing housing is administered by local Public Housing Agencies (PHA) authorized by HUD to administer the program in the area. In areas where no housing agency has been established to administer the program, interested citizens and the local government may wish to establish such an agency.

C. The HUD Housing Voucher Program uses a "shopper's incentive." If a unit rents for less than the payment standard established by the local PHA, the eligible family benefits by paying less than 30 percent of its monthly adjusted income toward rent or occupancy charge and utilities, subject to a minimum rent calculation by the PHA. If a unit rents for more than the payment standard, the housing assistance payment is not increased, nor is the family told it must find another unit, as in the Certificate Program. Instead, the family pays the entire difference between the rent and the housing voucher payment.

D. In Rural Cooperative Housing (RCH):

1. The HUD Section 8 Housing Assistance Payments program under HUD regulation 24 CFR part 882 does not apply.

2. The HUD Voucher Program under HUD regulation 24 CFR part 887 applies. Wherever the word tenant appears in this exhibit, it shall also mean member; rent shall also mean occupancy charge; and lease shall also mean occupancy agreement.

III. *FmHA Policies Concerning Rental Rates and Payments.*

A. Under the Section 8 Housing Assistance Payment and Housing Voucher Programs, HUD will pay a portion of the tenant's rent including utility allowance as described in paragraphs II B or C, whichever is appropriate. The contract rent to be established under either HUD program will be as follows: (1) For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit Plan I, the contract rent will be the note rate rental rate for the units as determined by the current approved annual budget using a 3 percent amortization factor for principal and interest payments; (2) for borrowers operating without interest credit, the contract rent will be the note rate rental rate for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments; (3) for borrowers operating in accordance with interest credit Plan II, the contract rent for certificate participants will be the basic rental rate as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments; for Housing Voucher participants, the rent to owner must be the lesser of the note rate rent for the unit as approved by FmHA, or the payment standard approved by the PHA, but not less than basic rent approved by FmHA.

B. This method of calculation and transmittal of the scheduled payment to the Finance Office will be in accordance with Exhibit H of the subpart.

IV. *Responsibilities.*

A. *Household.* A household must obtain a Certificate of Family Participation or a Housing Voucher to obtain the appropriate housing assistance. Households receiving housing assistance under either program will be responsible for fulfilling all of their obligations under the Certificate of Family Participation or Housing Voucher issued to them by the PHA and under the lease with the owner.

B. *Owner (FmHA Borrower).* The owner, upon being presented a Certificate of Family Participation or a Housing Voucher, shall contact and enter into a Housing Assistance

Payments Contract or Housing Voucher Contract, whichever is appropriate, with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C. *FmHA.*

1. FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

a. Obtaining and reviewing all reports from the borrower in accordance with Subpart C of part 1930 of this subpart.

b. Review and approval of budgets and rental rates.

c. Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2. FmHA will not be responsible for the requirements and conditions of the contract entered into between the PHA and owner but will cooperate with HUD and PHA to the extent possible to assure that the borrower carries out all obligations under the contract.

V. *Special Conditions.*

A. *Eligibility.*

1. The PHA will determine a household's eligibility before the Certificate of Family Participation or Housing Voucher is issued. To be eligible for either form of housing assistance, the household's income as determined by HUD may not exceed 80 percent of the median income for the area. The household's eligibility for housing assistance payments will continue until the amount payable by the household equals or is greater than the gross rental rate under the Section 8 program; under the Housing Voucher program, the payment standard or when 10 percent of the family's income equals or exceeds the rent to owner plus any applicable utility allowances. However, when these conditions are exceeded, the household may still be able to occupy a rental unit under the FmHA interest credit program if 30 percent of the family's income is greater than the lowest established rental rate for the unit.

2. Form FmHA 1944-8, "Tenant Certification," will not be required for tenants who have obtained a Certificate of Household Participation or a Housing Voucher from the PHA. A copy of the Certificate of Household Participation or the Housing Voucher, however, needs to be provided to the FmHA District Director.

3. The tenant's adjusted household income must not exceed the maximum income limitations (initially in the case of RCH) as authorized by FmHA for the project.

B. *Security Deposits.* According to HUD regulations, the owner may require a household to pay a security deposit. For certificate participants the maximum amount will be the greater of the amount of rent payable by the household towards one month's total tenant payment or $50. For voucher participants, the security deposit may not exceed the lesser of the limit established by the PHA or one month's rent to the owner and it may not be unduly high so as to preclude participation by program applicants. Under HUD regulations, if a certificate household vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed one month's contract rent. For voucher participants, the reimbursement claim may include unpaid rent payable by the tenant or for other amounts the tenant owes under the lease.

C. *Payment for vacated units.*

1. *Certificate Program.* If a Certificate Family vacates the unit in violation of the provisions of the lease, the owner may receive the full housing assistance payment for the month in which the family vacates and then in the amount of 80 percent of the contract rent for a vacancy period not exceeding an additional month or the expiration or other termination of the lease, whichever comes first.

2. *Voucher Program.* If a Housing Voucher Family moves from the unit, the owner may claim reimbursement from the PHA for any amount the family owes under the lease (up to one month's rent to the owner) minus the maximum security deposit the owner could have collected under 24 CFR 887.211.

D. *Limitation of owner's participation in the two programs.* HUD's regulations provide that assistance under Section 8 Certificates will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded for the purpose of relieving hardship of a particular household or households with the approval of the HUD field office. There is no corresponding limit under the HUD Housing Voucher program. The HUD limits shall not affect the number of rental assistance (RA) units the project receives through FmHA.

E. *Special problems.* Any problems on utilizing either the HUD Section 8 Certificate or the Housing Voucher program for existing RRH projects not covered by this exhibit should be referred to the National Office by the State Director.

Exhibit J—Management of Congregate Housing and Group Homes

I. *Purpose:* This exhibit prescribes additional requirements for the management of congregate housing and group homes. It applies in addition to other requirements in this subpart.

II. *Definitions:*

Congregate Housing. Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

Group Home. Housing that is occupied by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can also be a multi-unit structure.

Service Agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service and the length of time the service will be provided.

Service Plan. A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

III. *Rent Subsidy Opportunities:* Congregate housing and group homes are subject to the provisions of paragraph IV of Exhibit B of this subpart. Subsidy discussed in that paragraph cannot be used to pay for services in congregate housing or group homes.

IV. *Management Operations:* Borrowers must comply with paragraph V of Exhibit B of this subpart in managing congregate housing and group homes. In addition, borrowers must submit a service plan that explains how services will be provided.

A. *Borrower's Experience.* Borrowers and management agents must outline their experience and plans for providing congregate and group home services when completing the management questionnaire in either Exhibit B-4 or B-5 of this subpart. Borrowers who are not experienced with congregate housing/group homes must obtain assistance from organizations or individuals experienced with congregate issues in developing management and servicing plans. The service provider's experience and ability to furnish the services must be documented.

B. *Service Plans.* Congregate housing/group home borrowers must submit a service plan in accordance with paragraph II of this exhibit. See Exhibit E of subpart E of part 1944 for guidance on the issues that should be included in the plan. The service plan will be an addendum to the management plan when appropriate, or subject to the signature and authorization requirements of the management plan when the service provider is not the borrower or management agent.

C. *Service Agreements.* Borrowers must submit a service agreement for each service they do not provide directly. The agreement must stipulate the specific service to be provided, the cost of the service and the length of time the service will be provided. The service agreement will be an addendum to the management agreement when appropriate, or subject to the signature and authorization requirements of the management agreement when the service provider is not the borrower or management agent. Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year.

V. *Renting Procedure:* In addition to meeting the conditions of paragraph VI of Exhibit B of this subject, borrowers must meet the following conditions.

A. *Eligible tenants.*

1. Tenants must meet the general provisions of paragraph VI. B. of Exhibit B of this subpart and be eligible to occupy elderly housing as defined in paragraph VI. B. 1. i. of Exhibit B of this subpart. Borrowers must be careful to ensure that all tenants, especially those who need the services to remain independent, can live independently in the project with the scope of services offered.

2. Tenants who need the services to remain independent may have a physical limitation that would make them ineligible tenants in a typical elderly RRH project. Tenants who need services to remain independent may

meet the tenant eligibility requirements contained in paragraph VI.B.1.i. of Exhibit B of this subpart by taking the services provided by the project.

B. *Tenant selection.* Borrowers must meet the provisions of paragraph VI.F. of Exhibit B of this subpart. In congregate housing and group homes, a further critical dimension is added for the selection and placement of tenants. This involves determining the ability of a tenant to sustain independence with the support services provided. Borrowers should be further guided by the following in selecting tenants for congregate housing and group homes:

1. *Congregate housing.*

a. *Tenant mix.* Most tenants living in congregate housing will be people who can live independently and will be able to extend their independence by using services available from the project. Some tenants may need services to enable them to remain independent. Borrowers must establish a written plan for ensuring an appropriate mix of tenants. If feasible, project management should be consulted when establishing the tenant mix. The plan should establish a maximum percentage of tenants who need services to remain independent. As existing tenants age, the percentage may increase. FmHA must concur with the proposed plan.

b. *Determining ability to be independent.*

(1) An evaluation of the ability of tenants to sustain independence with the support services provided by the project must be made. This evaluation must be made by a qualified professional assessment committee, which includes project management, a professional medical member, and others deemed appropriate by project management (i.e., social service caseworkers, representatives of elderly advocacy groups, clergymen, etc.). The assessments should be presented to project management for concurrence. A tenant's likelihood of sustaining independence as a result of living in congregate housing should be verified by one of the following methods:

(i) Certification by a physician or an agency responsible for support services as to a person's ability to remain independent with assistance from services.

(ii) By the use of any objective guide, such as Exhibits J–1 and J–2 of this subpart.

(2) When a determination is made concerning a tenant's need for services, he/she will be notified and placed on an appropriate waiting list and the tenant file and/or lease will be documented accordingly.

c. *Waiting lists.* To sustain a balanced mix of tenants, management may maintain a separate waiting list for fully independent tenants and tenants who need services to remain independent. Management may choose tenants in order to assure a balanced project in accordance with paragraph V.B.1.(a) of this exhibit. Selection of new tenants should be based on the predetermined tenant mix ratio. If necessary to maintain a balanced project, fully independent tenants may be chosen over tenants who need services or vice versa. The other provisions contained in paragraph VI.F. of Exhibit B of this subpart concerning waiting lists are applicable.

2. *Group home.* A group home may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people or mentally impaired tenants. This limitation will be outlined in the borrower's management plan. The following will apply to group homes:

a. Tenants of group homes cannot be required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or other organization.

b. Tenants should be selected from the local area before considering other areas.

C. *Determining per unit rental rates for group living arrangements.* A "unit" in a group home consists of the space occupied by a specific tenant household. It may be a traditional apartment unit, a bedroom or a portion of a bedroom. Rents are determined as follows:

1. When all units are of equal size, divide operational costs equally.

2. When all units are not of equal size, determine the size of each unit and divide operational costs accordingly.

a. The size of traditional units is their square footage.

b. The size of nontraditional units is the bedroom or portion of bedroom occupied by the household and portion of the common area to be used by all potential units in nontraditional units.

3. A unit occupied by a resident assistant is not considered a revenue producing unit and would be excluded from the rent determination.

VI. *Verification and Certification of Tenant Income, Ability to Live Independently and/or Employment:* The provisions of paragraph VIII of Exhibit B of this subpart apply. In addition to recertifying income, management must reassess the ability of each tenant to remain independent with the services provided by the project. Informal reassessment should be an ongoing process; however, a formal reassessment that uses the same criteria as the initial assessment must be done when a recertification of tenant income is prepared.

VII. *Lease Agreements:* In addition to the conditions contained in paragraph VIII of Exhibit B of this subpart, the following should be addressed:

A. *Tenants who need services to remain independent.* If a tenant needs services to remain independent, the lease must contain the following clause:

"I agree that I need the following services in order for me to live independently in this congregate housing/group home project. (List necessary services.) I understand that I must pay a monthly charge of $_____ for the services and that this payment will be in addition to my monthly rent payment."

B. *Inability to remain independent.* The following clause should be included in all leases for all congregate housing/group home tenants:

"I understand that management will periodically reassess my ability to live independently, applying the same criteria that was used to determine my initial eligibility for residency. If management determines that I can no longer live independently without services, I understand that choosing not to use them could render me an ineligible tenant in the project. If management determines that I have become physically or mentally unable to live independently in the project even with the services provided, I will voluntarily move from this congregate housing/group home project within the timeframe set by the terms of my lease."

C. *Services provided to people other than tenants of FmHA financed congregate housing.* If the meal facility serves people other than the tenants of the project, the applicant must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt services and reserve account attributable to the portion of increased space that is in excess of the needs of the tenants in the project. Tenants of the congregate housing must have priority in receiving the services. When the facilities are provided with loan funds, the following conditions must be met:

The services to be provided and the fees to be charged (if any) must be fully documented in the service plan, if provided by the applicant, or in the service plan and lease agreement if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement:

"This agreement will not be effective until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative."

VIII. *Rent Collection:* The provisions of paragraph IX of Exhibit B of this subpart will apply for services as well as rent. Tenants must pay charges for the services as documented in their lease. The payment for rent or services may be made separately or combined; however, payments for rent and service must be accounted for separately.

IX. *Borrower Project Budgets:* Borrowers must separate the revenue and expenses of project operations from the service component. Forms FmHA 1930–7, "Multiple Family Housing Project Budget" and 1930–8, "Year End Report and Analysis for Fiscal Year Ending ____," must reflect project operations only.

X. *Accounting and Reporting Requirements and Financial Management Analysis:* Borrowers must maintain separate financial records for the operation and maintenance of the project and the service component. Funds allocated to the operation and maintenance of the project cannot be used to supplement the cost of services. Detailed financial reports on the service component will not be required unless specifically requested by FmHA, but the project audit or verification of accounts must allocate revenue and expense between project operations and the service component.

XI. *Termination of Tenancy and Eviction.* To ensure that congregate housing remains residential and noninstitutional in nature, borrowers must explain clearly to applicants that:

A. When tenants can no longer remain independent without using the services, they may meet the tenant eligibility requirements contained in paragraph VI.B.1.i. of Exhibit B

of this subpart by taking the services provided by the project.

B. As a condition of occupancy, tenants must agree to vacate the project when they can no longer remain independent even though they are assisted with services. Tenants will vacate the project according to the terms and timeframe specified in their leases.

Exhibit J–1—Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence

In providing housing for senior citizens and individuals with handicaps, especially when that housing is provided in the form of congregate housing or housing involving group living arrangements, there is a critical dimension of occupancy that must be considered by the project management when selecting, placing, certifying and recertifying tenants. This dimension concerns the ability of tenants with functional impairments to sustain relative independence given the supportive services provided in the project.

No matter how well-meaning management might be in trying to provide housing for those tenants that have become ill or acutely impaired, rural rental housing apartment projects are designed for occupancy by tenants who are capable of caring for themselves. In a similar sense, congregate housing is designed for occupancy by those who are fully capable of living totally independent lives as well as for those who are able to sustain relative independence when given the non-shelter supportive services provided in the project. When management provides additional types of non-shelter support services to counteract the progressive functional impairments that prohibit tenants from being able to function on a semi-independent basis, it only makes those tenants more dependent on project management. Over time, this increased dependency has the effect of creating an "institution," and it runs contrary to the congregate housing objective of enabling tenants that are functionally impaired (but not ill) to sustain relatively independent lives.

Physicians, or state or local agencies responsible for providing non-shelter supportive services to the tenants, can assist project managers by providing certificates or statements concerning the degree of a tenant's functional impairment. This information can be used by project management to assess the tenant's ability to remain independent with assistance from the services provided in the project.

Exhibit J–2, "Type of Living Environment Needed in Relation to Nature and Degree of Disability," is an observational guide which can be used by management to assess a person's capacity for personal care and independent or semi-independent living.

Exhibit J–2—Type of Living Environment Needed in Relation to Nature and Degree of Disability

Component	Semi-independent Sub-minimum: Minimum	Semi-independent Sub-minimum: Independent	Standard
Mobility:			
In the home	Movement restricted, painful and slow. Requires assistance to remain in home such as grab rail, ramps, location of electrical outlets. Some help needed for cleaning and meal preparation.	Movement restricted Housekeeping becoming difficult; need some assistance work.	Easy movement able to feed, clothe, bathe, stoop, reach, clean, climb with little or no difficulty.
In the Neighborhood	Limited as to what can be done; mass transit rarely used, poor driver; slow at foot intersections.	Slowing down, cannot take mobility for granted; fair driver, cautious in mass transit.	Get about easily—can drive private car use cabs, buses, mass transit.
Out of Town	Must plan travel with care to avoid fatigue, bustle; short trips better.	Some fatigue on long trips better with companion.	Able to travel widely. Long trips out-of state, country seasonal trips easy
Physical Health	Moderate Malfunctioning of several major organ systems; increasing susceptibility to infectious disease, injury, accidents, and pollutants. Occasional discomfort and loss of vitality. Slowing of movement, slumping of posture. Stiffness or inflexibility of joints, noticeable decline in functioning systems.	Appearance of difficulty in one or more major organ system, i.e., (1) circulatory, (2) excretory, (3) skeletal, (4) muscular (5) nervous, (6) respiratory, etc. Decreased ability to ward off disease and/or becoming susceptible to accidents and injury.	Major organ systems performing well Free from infections, diseases and non-susceptibility to frequent accidents. Physically healthy, mobile, capable of self-maintenance and/or self care.
Mental health:			
Sensory Skills	Major difficulty with one or more senses.	Some difficulty with one more senses that may be co-compensated somewhat by other senses or aids.	Sensory activity is high—smell, hearing, taste, touch, sight.
Motor Skills	Significant loss of coordination	Decreased coordination	Physically vigorous; capable of quick movements.
Cognitive Skills	Frequent memory lapses; generally unable to formulate new ideas.	Memory beginning to fade; capable of some new learning, less capable of abstract thinking.	High level of cognitive functioning, able to adapt to environment changes; good power of retention, capable of new learning.
Affective Skills	Extended moments of depression and/or anxiety. Declining self-concept.	Less positive self-concept, some depression and anxiety.	Positive self-concept, generally depression and anxiety free.
Social Interactions	Ability to sustain and control social interaction with others difficult; family rarely seen; rarely goes to social gatherings like religious, social groups, eating habits substandard.	No longer initiates visits, friendships, or conversation with others, maintains occasional contact with family & friends.	Able to initiate, control, and sustain social interaction with family, friends, new encounters. Maintains existing social contact with religious social groups, neighbors, work, etc.
Income:			
Subsistence	Minimum standards of dress can be maintained with low quality clothing. Bare minimum nutritional standards are affordable, but not consistently. Standard housing without Gov't subsidy rarely affordable.	Minimum standards of dress can be maintained with substandard wardrobe. Bare minimum nutritional standards are affordable or made available. Minimally standard housing can be afforded only in the poorest areas.	Standards of dress can be maintained with a standard wardrobe. Standard nutritional levels and a range of food choices is affordable. Standard housing is attainable.
Discretionary	Money is rarely available for discretionary purposes.	Money is occasionally available for discretionary limited purposes without sacrificing basic necessities.	Some money is frequently available for limited discretionary purposes.

Source: Adapted from Sam Harris Associates, Ltd., 1976.

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations.

§ 1944.205 [Amended]

4. In § 1944.205, the definition for Elderly (Senior Citizen) is amended in paragraph (a)(1) by adding the phrase "but with the use of auxiliary apparatus may be gainfully employable' between the words "impairment" and "which."

5. In § 1944.205, the definition for Initial Operating Capital is amended in the first sentence by changing the word "bond" to "coverage."

6. In § 1944.205, the definition for Resident Assistant is amended in the first sentence by placing a period after the word "unit" and removing the balance of the sentence; in the second sentence by inserting the phrase "and cannot be a dependent of the household for tax purposes" between the words "household" and "and"; in the third sentence by changing the words "other than FmHA" to read "outside the project."

§ 1944.211 [Amended]

7. Section 1944.211 (a)(6)(iv) is amended by placing a period after the second word "funds" and by adding the phrase "The borrower must request in writing the withdrawal" between the new period and the word "after." A parenthetical "(12 month)" is inserted between the words "full" and "borrower."

§ 1944.215 [Amended]

8. Section 1944.215 (b)(5) is amended by adding the words "measures and practices" at the end of the first sentence.

9. Section 1944.215(f)(1) is amended by changing the reference "Exhibit B" to "Exhibit H."

10. Section 1944.222 is amended by revising the heading of paragraph (k) and paragraph (k)(2) to read as follows:

§ 1944.222 Technical, legal, and other services.

* * * * *

(k) *Surety bonding and fidelity coverage.* * * *

(2) If the applicant is an organization, it will provide fidelity coverage for its officials and employees, and/or require the same of its management agent, entrusted with the receipt, custody and disbursement of its funds and the custody of any other negotiable or readily salable personal property. The amount of the coverage will be determined by the guidance of Paragraph XV of Exhibit B to subpart C of part 1930 of this chapter, exclusive of loan funds deposited in a supervised bank account. Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

* * * * *

§ 1944.235 [Amended]

11. Section 1944.235(h) is amended by removing the words "Prerent-up or" in the heading; and in the introductory text by changing the phrase "soon after loan approval" to "90–120 days prior to the construction completion date" in the first sentence.

12. Section 1944.235(h)(1) is amended in the last sentence by removing the language between the comma and the period and inserting the phrase "the budget and rent schedule will be revised by the borrower and approved by the loan approval official."

13. Section 1944.235(h)(2) is amended in the first sentence by removing the word "all" and by adding the phrase "determined least likely to apply for the available housing" at the end of the sentence.

14. Section 1944.239 is amended in the first sentence of the introductory paragraph by removing the words "marital or."

15. Section 1944.239 (c) is revised to read as follows:

§ 1944.239 Complaints regarding discrimination in use and occupancy of Rural Rental housing.

* * * * *

(c) Participants in FmHA's housing program failing to comply with the requirements of title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanctions authorized by the law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. Victims of discriminatory housing practices may seek reparations from HUD or by private lawsuit. All complaints will be handled in accordance with prescribed procedure.

Exhibit A to Subpart E [Amended]

16–17. In Exhibit A to subpart E of part 1944, paragraph IV B 5 a is amended in the third sentence by changing the word "bond" to "coverage."

18. In Exhibit A to subpart E of part 1944, paragraph IV B 11 c is amended by changing the form title from "Statement of Budget and Cash Flow" to "Multiple Family Housing Project Budget."

19. In Exhibit A to subpart E of part 1944, paragraph IV B 16 a (1) is amended by removing the words "marital or."

PART 1951—SERVICING AND COLLECTIONS

20. The authority citation for part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; and 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing.

21. Section 1951.506 is amended by revising paragraphs (a) (1), (a) (2), (a) (3), (a) (5)(i), (a) (5) (ii), (a) (5) (iii), (a) (5) (iv), (a) (5) (v), (a) (6), and (c) to read as follows:

* * * * *

§ 1951.506 Processing payments.

(a) * * *

(1) All payments will be based on tenants occupying the units as of the first day of the month for which the payment statement is generated prior to the payment due date. For the purpose of this subpart, the word "tenant" also means RCH "members."

(2) The borrower must deliver all Forms FmHA 1944–8, "Tenant Certification," or for tenants receiving Section 8 assistance, the acceptable Department of Housing and Urban Development (HUD) form to the District Director according to paragraph VII F 1 of exhibit B to subpart C of part 1930 of this chapter. The District Director will verify the information on the tenant certification also as required in paragraph VII F of Exhibit B to subpart C of part 1930 of this chapter. The data from the verified tenant certifications should be entered on a "master" Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance" filed with the current tenant certifications in the District Office servicing file. Only tenants with current tenant certifications shown on this "master" list may be certified for interest credit or rental assistance.

(3) On or about the 20th day of each month, the Finance Office will generate and mail to each borrower Form FmHA 1944–9A, "Multiple Family Housing Statement of Payment Due," showing the current monthly payment due, unpaid late fees, any other charges to the account, and delinquent payments, if any, due on the first day of the following month. This payment statement will be determined from current Finance Office

records but will not reflect overage or occupancy surcharge due from the borrower or rental assistance due the borrower.

* * * * *

(5) * * *

(i) Only tenants occupying units the first day of the month prior to the payment due date.

(ii) Interest credit and rental assistance may be claimed only for tenants with current certification as specified in paragraph VII F of Exhibit B to subpart C of part 1930 of this chapter.

(iii) Overage up to the market rent must be paid to FmHA by the borrower for tenants without current tenant certifications unless there is a formal eviction in process, then the payment will be based on the expired tenant certification. The District Director may determine that the tenant may be required to reimburse the borrower for that overage as allowed in paragraph VII F 6 c of Exhibit B to subpart C of part 1930 of this chapter.

(iv) Any occupancy surcharges due FmHA as described in Exhibit B of this subpart.

(v) The borrower may subtract any rental assistance due the project (supported by current tenant certifications) from the payment due and remit a "net" payment. Calculations supporting the "net" payment must be shown on part I of Form FmHA 1944–29. The Finance Office will net enough RA to bring the account status current and pay any unpaid overage, late fees, etc., based on the payment reception date. If the account is on or ahead of schedule on the payment reception date, enough RA will be netted to pay one full installment and any unpaid overage.

(6) The District Director will verify that data on current tenant certifications held in the District Office supports claims on Form FmHA 1944–29. The District Director will prepare Form FmHA 1951–55, "Collection Log" and input the payments through District Office terminals.

* * * * *

(c) *Uncollectible payment.* Uncollectibles will be handled under subpart B of this part. The payment effective date will be the day of the month on which the replacement payment is received in the District Office.

22. Section 1951.507 (e) is revised to read as follows:

§ 1951.507 Maintaining borrower accounts.

* * * * *

(e) *District Office monitoring.* District Offices should review each account at least monthly by accessing the Automated Multi-Housing Accounting System (AMAS) through field office terminals.

23. Section 1951.510 is amended by revising paragraphs (c)(1), (c)(3), and (j) and by adding paragraph (c)(4) to read as follows:

§ 1951.510 Payment application.

* * * * *

(c) * * *

(1) A loan payment is due on the first day of a month. A loan payment is considered past due when it is received on the second day or a subsequent day through the close of business of the tenth day of the month. A loan payment is late when it is received after normal business hours of the tenth day of the month, without regard to weekends, holidays or payment transmission factors. Thereafter a late fee will be charged as described in paragraphs (c)(2) and (4) of this section.

* * * * *

(3) A project is considered delinquent on the 30th day of the month when any due amount is unpaid.

(4) When a regular PASS payment continues to be delinquent on the first of the month following the delinquent payment due date, interest will be charged on the unpaid principal at the note rate until all regular payments, recoverable cost charges, late fees and occupancy surcharges have been paid current in accordance with the number of full installments required by the promissory note. This interest will be in addition to the scheduled interest of the regular payment. The interest on delinquent principal will be added to the regular payment amount due for the month.

* * * * *

(j) *Final payments.* Final payments will be applied on the next payment due date or the final due date shown on the promissory note, assumption agreement or reamortization agreement, whichever is sooner. The District Office will obtain the amount of final payment through field office terminals by referencing status inquiry screen M1XI, "Accrual Calculation Request." Final payment should be accepted under conditions specified in § 1965.90 of subpart B to part 1965 of this chapter.

24. Section 1951.512 is revised to read as follows:

§ 1951.512 Changes in the application of payments.

District Office employees with State Director authorization according to § 1930.143 of subpart C to part 1930 of this chapter are authorized to approve reapplication of payments between accounts when payments have been applied in error. All authorization for reapplication of payments must conform to the policies expressed in this subpart. No change may be made if the loan is paid in full, the cancelled note or notes have been returned to the borrower, and the security instruments have been satisfied. Changes will be entered through field office terminals.

25. Section 1951.517(a) is amended by changing the words "will be" to "was," and by removing the phrase "on May 1, 1985," that follows the word "converted."

26. Section 1951.517 is amended by revising paragraphs (b)(3)(ii) and (b)(4) to read as follows:

§ 1951.517 Conversion from DIAS to PASS.

* * * * *

(b) * * *

(3) * * *

(ii) When the borrower will continue to receive interest credit following conversion, the current interest credit plan type will be passed through to the PASS loan. However, a new Form FmHA 1944–7 must be prepared to reflect the PASS payment and subsidy amount.

* * * * *

(4) *Principal balance to be converted.* For transfers and reamortizations, the applicable transfer or reamortization form will convert the account to PASS. The principal balance converted to PASS will be established according to the FMI for Forms FmHA 1965–9, FmHA 1965–10, or FmHA 1965–16, and the following:

(i) For DIAS to PASS transactions (new terms):

(A) First of month closings: The unpaid interest and overage accrued through the last day of the previous month will be capitalized.

(B) Other than the first of the month closing: Accrued interest and overage through the date of closing will be capitalized. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and applied to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(ii) For DIAS to PASS transactions (same terms):

(A) First of month closings: Accrued interest and overage through the last day of the previous month will be collected from the transferor at closing and credit to the transferor's account.

(B) Other than the first of the month closing: Accrued interest and overage through the date of closing will be

collected from the transferor at closing and credit to the transferor's account. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and credited to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(iii) Reamortizations will always be closed the first day of the month. Unpaid interest, including any unpaid overage, may be capitalized as follows: DIAS to PASS transactions, through the last day of the previous month; and PASS to PASS transactions, through the 30th day of the previous month.

(iv) Audit receivables may not be transferred or reamortized. They will be established as a "Collection Only" account for the transferor and must be collected or charged off.

* * * * *

PART 1965—REAL PROPERTY

27. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Security Servicing for Multiple Housing Loans.

§ 1965.61 [Amended]

28. In Section 1965.61, the introductory text of paragraph (e) (2) is amended by removing the phase "laundries, commissary stores."

29. Section 1965.61(e)(2)(iv) is amended by changing "1 year" to "3 years."

May 1, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-19826 Filed 8-26-91; 8:45 am]

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Part III

Department of Agriculture

Rural Electrification Administration

7 CFR Parts 1712, 1719, 1739, and 1746

Pre- and Post-Loan Policies and Procedures for Guaranteed Electric and Telephone Loans; Interim Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1712, 1719, 1739 and 1746

Pre- and Post-Loan Policies and Procedures for Guaranteed Electric and Telephone Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: Pre-loan policies and procedures common to insured and guaranteed electric loans were published as a proposed rule 7 CFR 1710 at 56 FR 8234, on February 27, 1991. Previously published regulations, 7 CFR parts 1735, 1737 and 1744, codified pre-loan and post-loan policies and procedures common to insured and guaranteed telephone loans. This rule contains policies and procedures for a new program recently authorized under section 314 of the Rural Electrification Act (RE Act), which provides 90 percent guarantees of loans from private lenders.

DATES: This rule is effective on August 27, 1991.

Written comments must be received by REA or carry a postmark or equivalent no later than October 28, 1991.

ADDRESSES: Written comments should be addressed to Sharon E. Ashurst, U.S. Department of Agriculture, Rural Electrification Administration, room 1270, 14th & Independence Avenue, SW., Washington, DC 20250–1500. REA requests an original and 3 copies of all comments (7 CFR 1700.30(e)).

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator-Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4048–S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, Telephone: (202) 382–9547.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This interim rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Regulatory Flexibility Act Certification

Gary C. Byrne, Administrator, REA, has determined that this interim rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most borrowers of REA loans do not meet the requirements for small entities. Further, the regulations are applied equally to all borrowers.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the new information collection and recordkeeping requirements contained in this interim rule have been approved by OMB under control number 0572–0091. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

Gary C. Byrne, Administrator, REA, has determined that this interim rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this interim rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees, and No. 10.851 Rural Telephone Loans and Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This interim rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans to governmental and nongovernmental entities from coverage under this Order.

Background

This interim rule adds a new loan guarantee program authorized under section 314 of the RE Act. Section 314 was added to the RE Act by section 1201 of subtitle B of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508.

New parts 7 CFR 1712 and 1719 contain respectively the pre-loan and post-loan requirements specific to guaranteed electric loans. Applicants for guaranteed electric loans must meet the requirements of these parts as well as the applicable provisions of 7 CFR part 1717, and other REA regulations.

Additionally, REA adds new 7 CFR parts 1739 and 1746 to establish the pre-loan and post-loan requirements specific to guaranteed telephone loans authorized under section 314 of the RE Act. They are essentially the same as 7 CFR parts 1712 and 1719 except in the relatively few areas where the wording has been adapted to the telephone program. 7 CFR parts 1739 and 1746 contain the full text applicable to the telephone program in cases where these changes were necessary. Otherwise, they refer to the applicable sections of 7 CFR part 1712 and 1719.

The new program, detailed in subpart B of 7 CFR parts 1712 and 1719, provides a 90 percent guarantee of loans from eligible private lenders. The Federal Financing Bank (FFB), the Rural Telephone Bank (RTB) and any lender that is an agency or instrumentality of the United States are excluded from receiving guarantees under this program. Loans provided through tax exempt financing are not eligible for these guarantees (7 CFR 1712.53 and 1739.53).

Security for the guaranteed and unguaranteed portions of the loan is provided by full pro rata sharing of the mortgage on a borrower's facilities and property (7 CFR 1712.55 and 1739.55). REA guarantees 90 percent of the outstanding loan principal and 90 percent of the interest due on the outstanding loan principal (7 CFR 1712.54, 1719.56, 1739.54 and 1746.56). The Lenders Agreement between REA and a lender provides that, in the event of a monetary default, any payments made by the borrower and any proceeds from liquidation will be applied first to reimburse REA for any payments made under the guarantee, then against the guaranteed portion of the loan, and finally to the unguaranteed portion of the loan (7 CFR 1719.56 and 1739.56).

REA considered three options for the operation of the guarantee: (a) Guarantee timely regular loan payments until the loan is paid in full, (b) guarantee payment of any loss remaining after settlement or liquidation of the loan, and (c) guarantee payment in full following default. Option (b) could result in significant accruals of interest that would have to be paid by REA under the guarantee and significant

delays in final payment to the lender. In cases of a default, lenders would probably pressure REA to liquidate rather than restructure the loans. Due to potential negative impacts on REA, the borrower, and the lender, this option was rejected.

It is likely that any monetary defaults under this program would fall into one of two typical cases. Either the default would be resolved quickly, or resolution would require lengthy negotiations. REA chose a combination of options (a) and (c). That is, REA has the option to continue regular payments on the loan or to pay the guaranteed portion in full within a short period after a default. This rule: (1) Gives REA maximum flexibility in resolving defaults, (2) gives borrowers a better opportunity to correct the default or restructure the loan to ensure full repayment, and (3) limits the impact on the lender and the secondary market. A lender or holder would either continue to receive the expected cash flow or obtain early settlement on the outstanding balance of the loan.

The terms of the loan will be negotiated between the lender and the borrower subject to REA approval and limitations specified in this rule (7 CFR 1712.56–1712.60 and 1739.56–1739.60). Latitude will be allowed on terms. However, REA retains reasonable control to prevent guaranteeing loans with terms not typical of similar unguaranteed loans.

The appendices to 7 CFR 1712, i.e., Notice of Lender Selection, Conditional Commitment to Guarantee, Lender's Agreement, Loan Note Guarantee, Loan Note, and Assignment Guarantee Agreement, shall be followed as guides to the extent practicable in processing and/or documenting a private lender loan and the loan guarantee. Use of these guides to the extent practicable is intended to streamline loan guarantee processing and minimize the burden on the lender, the borrower and REA. No guide has been presented for a loan agreement between the lender and borrower. However, such agreements are subject to REA approval (7 CFR 1712.68 and 1739.68).

Three options were examined for secondary market transactions. The first was to disallow assignment of the loan or guarantee. Without the ability to assign the guaranteed portion of the loan to secondary investors, it is unlikely that much capital could be attracted from major financial markets to the rural areas served by REA borrowers. The second option was to allow assignments only if both the guaranteed and unguaranteed portions of the loan were sold together. The risk involved with the unguaranteed portion of the loan would discourage secondary market involvement. Also, lenders who no longer hold any portion of the loan would have less incentive to diligently service the loan. Therefore, REA chose the third option which allows assignment of up to 100 percent of the guaranteed portion of the loan while requiring the lender to hold the unguaranteed portion. This option should encourage secondary market participation by presenting a fully guaranteed instrument that should command a rate of return only slightly above the Treasury rate. Consequently, this option should offer borrowers the best rates possible from lenders. Moreover, retention of lender risk should encourage diligence in the servicing of the loan.

The initial assignment by a lender will require REA approval. Subsequent assignments will not. The assigned portion of a guarantee can be held by only one holder at a time. This does not prohibit two or more entities from consolidating into a single entity as a holder. These provisions should foster the effective and timely administration of the guarantee programs.

The lender will be responsible for most of the servicing duties associated with the loan. 7 CFR 1712.61, 1719.53–1719.56, 1739.61, and 1746.53–1746.56 provide details of the servicing requirements. Additionally, lenders will be responsible for preparation of the mortgage that secures the loan (7 CFR 1712.73 and 1739.73). These requirements are intended to be similar in scope to the work a lender would normally do on similar non-guaranteed loans. Because of previous loans, REA would be the majority noteholder in most cases, and thus would retain certain servicing functions, such as approving loan fund advances. The impact on borrowers of these servicing requirements are little different than in the case of REA insured loans, or loans from a private lender without a guarantee.

Proposed subparts C and D of 7 CFR parts 1712, 1719, 1739, and 1746, which contain policies and requirements for 100 percent guarantees of loans authorized under Section 306 of the RE Act, are published elsewhere in this issue.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause to be impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** and for making the revisions effective upon publication because: (1) REA has determined that unless the rule is published and made effective immediately it is unlikely that much if any of the Fiscal 1991 authorizations under section 314 of the (RE Act) will be available for use by borrowers before those authorizations lapse, (2) operation of the section 314 program on an interim basis is desirable to gain experience with the operations of private lenders, and (3) the 60 day comment period will allow comments and concerns based on actual borrower and lender experiences to be reflected in the final rule covering fiscal years which commence after September 30, 1991. REA will begin accepting applications for section 314 guarantees upon publication of this rule.

List of Subjects

7 CFR Part 1712 and 1719

Administrative practice and procedure, Electric power, Electric utilities, Guaranteed loan program, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Parts 1739 and 1746

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, REA amends 7 CFR Chapter XVII by adding the following new Parts 1712, 1719, 1739 and 1746:

1. Part 1712 is added to read as follows:

PART 1712—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED ELECTRIC LOANS

Subpart A—General

Subpart B—Section 314 Loan Guarantees—Private Sector

Authority: 7 U.S.C. 901 et seq.; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—General

§ 1712.1 General.

(a) This part establishes specific pre-loan policies, procedures and requirements that apply to guaranteed loans to finance the construction and improvement of electric facilities in rural areas, including generation, transmission and distribution facilities, as well as other facilities and purposes approved by REA.

(b) Borrowers must comply with all other applicable REA regulations.

(c) Any loan guaranteed by REA cannot be used for any part of the supplemental financing required by REA in conjunction with an REA insured loan.

(d) Information about the availability of REA forms and publications cited in this part is available from the Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. These REA forms may be reproduced.

(e) This part supersedes those portions of the following REA bulletins and supplements thereto that are in conflict:

(1) Bulletin 20–6, Loans for Generation and Transmission; and

(2) Bulletin 20–22, Guarantee of Loans for Bulk Power Supply Facilities.

§ 1712.2 Definitions.

Terms used in this part shall have the following meaning:

Amended and Restated Loan Commitment Agreement means the agreement between REA and the Federal Financing Bank (FFB) that sets forth certain terms and conditions for loans made by the FFB and guaranteed by REA, and well as the responsibilities and obligations of the two parties.

Assignment Guarantee Agreement means the agreement executed between REA, the private lender and the holder that sets forth the terms and conditions of an assignment of all or any part of the guaranteed portion of a loan.

Conditional Commitment to Guarantee means the executed document that sets forth REA's conditional commitment to guarantee a private lender's loan subject to the acknowledgment and acceptance by the borrower and lender of certain conditions and requirements. A similar document may be used for guaranteed loans made by the FFB.

Holder means the entity that owns all or part of the guaranteed portion of a loan. A lender may be a holder, but in most contexts holder refers to an entity other than the lender.

Lender means the organization making and servicing the guaranteed loan under the provisions of an executed Lender's Agreement. Lender is also referred to as a private lender.

Lender certification statement means the statement executed by a private lender certifying to REA that the Lender's Agreement, the Loan Note, any loan agreement between the lender and borrower, any Assignment Guarantee Agreement, and any other documents to be executed among the respective parties are the same in form and substance, except as clearly specified by the lender, as such unexecuted documents previously approved by REA.

Lender's Agreement means the written contract between the private lender and REA setting forth primarily the lender's rights and obligations with respect to the guaranteed loan and the manner in which REA will make payments to the lender under the Loan Note Guarantee.

Loan Note means an evidence of debt. Should REA guarantee a bond issue, "note" shall also be construed to include "bond" or other evidence of indebtedness.

Loan Note Guarantee means the contract of guarantee issued by REA that sets forth the terms and conditions of REA's guarantee of a private lender's loan.

Monetary default, which is also referred to as a payment default, means the failure of a borrower to make a loan payment when due as prescribed in the Loan Note.

Notice of Lender Selection means the document that sets forth the private lender's qualifications and the private lender's proposal to make a loan to a borrower.

Private lender means a lender eligible under § 1712.52.

§ 1712.3 Initial contact.

An electric system interested in applying for a loan guarantee that has not previously received financial assistance from REA should write to the Rural Electrification Administration, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1500. A field or headquarters staff representative may be assigned by REA to visit the applicant and discuss its financial needs and eligibility. Existing borrowers should initiate contact directly with their assigned field representative. Borrowers may consult with REA field representatives and headquarters staff, as necessary.

§§ 1712.4–1712.49 [Reserved]

Subpart B—Section 314 Loan Guarantees—Private Sector

§ 1712.50 Legal authority.

Pursuant to Section 314 of the RE Act, REA may provide financial assistance to borrowers for the purposes set forth in section 4 of the RE Act by providing 90 percent guarantees of loans made by any legally organized lending agency as defined in § 1712.52. REA may not provide a guarantee under this subpart for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States.

§ 1712.51 Eligible loan purposes.

REA may provide 90 percent loan guarantees for any loan purposes approved by REA. Priority will be given to the financing of distribution and subtransmission facilities.

§ 1712.52 Eligible lenders.

(a) To be eligible for a loan guarantee under this subpart, a lender must be a legally organized lending agency. The following classes of lenders are eligible, provided they meet all the requirements of this section:

(1) Any Federal or state chartered bank or savings and loan association;

(2) Any Farm Credit System institution with direct lending authority;

(3) Building and loan associations;

(4) The National Rural Utilities Cooperative Finance Corporation;

(5) A mortgage company that is part of a bank holding company;

(6) An agricultural credit corporation that is a subsidiary of a Federal or state chartered bank;

(7) An insurance company regulated by the National Association of Insurance Commissioners; and

(8) Other lenders that meet the requirements of this section.

(b) Lenders shall be subject to credit examination and supervision by a Federal or state agency unless REA determines that alternative examination and supervisory mechanisms are adequate.

(c) Lenders shall demonstrate to REA the capability to adequately service guaranteed loans. They also shall be in good standing with their licensing authority and meet the loan-making, loan-servicing, and other requirements of the state in which the lender makes loans guaranteed under this subpart.

(d) The lender selected by the borrower shall provide evidence satisfactory to REA of its qualification under this section, along with the name of the authority that supervises such lender.

(e) REA may require that a lender provide information on its financial strength and capitalization.

§ 1712.53 Exclusion of tax-exempt financing.

(a) A loan, including any other type of debt issuance, is not eligible for an REA guarantee if the income from the loan or the income from obligations issued by the holder of the loan, when the obligations are created by the loan, is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(12) et seq.).

(b) The lender shall certify to REA, and each subsequent holder of the loan shall certify to the seller, that it is in compliance with this section.

(c) A loan guarantee issued by REA shall be null and void with respect to the current holder of the loan if said holder is in violation of this section.

§ 1712.54 Loan guarantee limit.

(a) REA will guarantee repayment of 90 percent of the outstanding loan principal and 90 percent of the interest due on the outstanding loan principal, as further defined in 7 CFR 1719.56. A lesser proportion may be guaranteed if requested by the lender.

(b) REA's guarantee is limited to the loan repayment obligation of the borrower and does not extend to guaranteeing that a lender will remit to a holder loan payments made by the borrower.

§ 1712.55 Loan security.

(a) REA will allow the full pro rata sharing of its mortgage security on all of a borrower's facilities and property with a private lender on both the guaranteed and unguaranteed portions of the loan (see 7 CFR 1719.56 for the application of payments between the guaranteed and unguaranteed portions of the loan.) REA's accommodation of its lien will provide for the following:

(1) An equal pro rata mortgage lien with all other lenders on the mortgage in the event of liquidation;

(2) Limited controls over the borrower's operations; and

(3) The ability to pursue remedies for financial defaults, as set forth in the mortgage, subject to REA's prior written approval.

(b) If REA has repurchased the guaranteed portion of the loan, the lender's lien will then apply only to the unguaranteed portion of the loan, and REA shall have the lien for the guaranteed portion of the loan.

(c) The lender may not obtain greater security for the unguaranteed portion of the loan than for the guaranteed portion, and if the lender exercises any rights to set-off in order to collect any portion of the loan, any payments so collected shall be applied as provided in 7 CFR 1719.56.

(d) At all times when any note representing any portion of the guaranteed loan is outstanding, the mortgage security shall secure payment of all such notes pro rata. So long as any such note has not been repurchased by REA, the lender and not the holder of such note or any interest therein shall be considered to be, and shall have the rights of, a secured noteholder for purposes of such mortgage security.

(e) The granting of a lien to the lender is subject to any approval rights of other mortgagees secured under the mortgage.

(f) The mortgage, which is subject to REA approval, shall be prepared by the lender, unless REA decides otherwise.

§ 1712.56 Interest rates.

(a) Interest rates, which are subject to REA approval, shall be negotiated between the lender and the borrower. They may be either fixed or variable. The interest rate must be the same for the guaranteed and unguaranteed portions of the loan.

(b) The interest rate charged shall be no higher than the rate customarily charged by the lender on other loans of similar maturity, having a similar risk of repayment and similar security. REA will not guarantee a loan if it determines, in its sole discretion, that the proposed interest rate does not meet the standards of this paragraph.

(c) If a variable interest rate is selected, it shall be tied to a published rate, agreed to by the lender and the borrower and approved by REA, that is recognized regionally or nationally and is readily accessible and verifiable. The published rate selected may not be changed unless approved in writing by the lender, the borrower, and REA.

(d) The frequency of change in a variable interest rate for a given advance of funds shall be specified in the Lender's Agreement and in the Loan Note, but shall not be more often than monthly. The variable interest rate for a given advance of funds shall not be raised:

(1) More than 100 basis points in any year; and

(2) Not more than 500 basis points during the life of the loan, which establishes the ceiling interest rate for the loan advance. The borrower shall be given sufficient notice of each adjustment in the interest rate.

(e) A variable interest rate can be changed to a fixed rate, provided the fixed rate does not exceed the ceiling interest rate for the advance. A fixed interest rate can be changed to a variable rate if the variable rate has a ceiling that is not higher than the original fixed rate. Such interest rate changes may be made at any time during the life of the loan in accordance with the Lender's Agreement and as provided in the Loan Note. Written notice to and prior written approval by REA for each change under this paragraph is required. The lender is responsible for the legal documentation of interest changes under this paragraph by an amendment to the Loan Note.

(f) The Loan Note shall provide for adjustment of payment installments coincident with an interest rate change to ensure that the outstanding principal balance is amortized within the prescribed loan maturity and to eliminate the possibility of a balloon payment at the final maturity date of the loan.

(g) The interest rate applicable to each advance of funds shall be established and recorded in accordance with the terms of the Loan Note.

§ 1712.57 Loan maturity.

The maturity of the loan may not exceed 35 years, and generally it may not exceed the expected useful life of the facilities financed. The maturity date shall be determined by mutual consent of the borrower, the lender, and REA.

§ 1712.58 Terms of repayment.

(a) The method and frequency of debt service payments on the loan shall be

specified in the Loan Note and are subject to REA approval. Debt service payments shall be scheduled on terms that assure repayment of the loan by the final maturity date, and shall be no less frequent than quarterly.

(b) Interest shall be payable on the unpaid principal balance, from the date of each advance of funds until the principal is repaid.

(c) The guaranteed loan may be repaid in substantially equal periodic installments covering interest and principal, in periodic installments that include interest and level amortization of principal, or other principal repayment schedule satisfactory to REA.

(d) Initiation of principal amortization shall be as follows:

(1) Principal amortization on loan fund advances made for distribution and subtransmission facilities during the first 2 years following the date of the Loan Note shall begin no later than 2 years from the date of the Loan Note. Principal amortization on advances for such facilities made 2 years or more after the date of the Loan Note shall begin with the next scheduled loan payment.

(2) Principal amortization on advances made for bulk transmission and generation facilities shall begin on the date specified in the Loan Note and is subject to REA approval. The amortization of principal for such advances shall begin no later than the date these facilities are placed into service.

(e) REA will not guarantee any loan under this subpart that provides for:

(1) A balloon payment of principal or interest at the final maturity date of the loan; or

(2) The payment of interest on interest.

§ 1712.59 Advance of funds.

(a) The lender must obtain REA approval to advance loan funds prior to each advance of funds.

(b) Except as provided in paragraph (c) of this section, funds may not be advanced from a guaranteed loan:

(1) After 4 years from the date of the Loan Note for loans made for distribution and subtransmission facilities; or

(2) After 7 years from the date of the Loan Note for loans made for bulk transmission or generation facilities.

(c) The Administrator may approve the advance of loan funds after the dates set forth in paragraph (b) of this section if the borrower has demonstrated to the satisfaction of the Administrator that the funds are needed for approved loan purposes, that the facilities will be completed within a reasonable time frame, and that said advances will be adequately secured under the mortgage.

(d) REA will rescind its loan guarantee with respect to any loan funds not advanced to a borrower as of the final date approved for advancing funds pursuant to this section.

(e) If, based on actual or projected financial performance of the borrower, REA determines that the borrower may not achieve the Times Interest Earned Ratio (TIER) or Debt Service Coverage (DSC) levels in the current or future years that are required by REA, REA may choose not to approve the advance of guaranteed loan funds until the borrower has taken remedial action satisfactory to REA.

(f) If the guaranteed loan is made concurrently with an REA insured loan and/or a supplemental loan, the chronological order of advancing funds from the various loans shall be as follows:

(1) 50 percent of the REA insured loan funds;

(2) 100 percent of the supplemental loan funds;

(3) 100 percent of the funds of the loan guaranteed under this subpart; and

(4) The remaining amount of the REA insured loan funds.

§ 1712.60 Fees for guaranteed loans.

(a) No fees or charges will be assessed by REA for its guarantee of a loan under this subpart.

(b) The lender may assess the borrower loan origination fees or other charges, subject to REA approval, provided such fees and charges are no higher than those charged by the lender to its other customers for similar types of transactions.

(c) Any loan servicing fees assessed a holder, other than REA, are not subject to REA review or approval.

(d) Fees and other charges authorized by this section will not be guaranteed by REA and shall not be included as part of the loan.

§ 1712.61 Loan servicing.

The lender shall be responsible for servicing the entire guaranteed loan in accordance with the Lender's Agreement, notwithstanding the fact that another party may hold all or a part of the guaranteed portion of the loan. Loan servicing requirements are set forth in 7 CFR 1719.52.

§ 1712.62 Secondary transactions.

(a) Lenders are permitted to assign to a holder up to 100 percent of the guaranteed portion of a loan, provided the loan is not in payment default. The assignment may be by direct sale of all or part of the guaranteed portion of the loan to the holder, or by other means. The assignment must comply with the provisions of 7 CFR 1719.53, and be evidenced by an Assignment Guarantee Agreement, using appendix B of this part as a guide to the extent practicable. The unguaranteed portion of a loan shall not be assigned except for security purposes.

(b) The Loan Note Guarantee and the Assignment Guarantee Agreement shall be considered collectively to constitute the "contract of guarantee" as that term is used in Section 306 of the RE Act with respect to assignment of the loan and related loan guarantee.

(c) If REA makes a payment under the Lender's Agreement, REA's liability for such payment is discharged. The lender is responsible for remitting to the holder that portion of the payment due the holder as set forth in 7 CFR 1719.56 and the Lender's Agreement.

§ 1712.63 Conflict of interest.

(a) All eligible lenders shall provide information, satisfactory to REA, in the Notice of Lender Selection as to whether and the extent that:

(1) The borrower, its principal officers members of the board of directors, or members of the immediate families of said officials hold any stock or other evidence of ownership in the lender's organization; and

(2) The lender or its principal officers hold any stock or other evidence of ownership in the borrower, other than patronage capital.

(b) If a borrower has knowledge of any information required in paragraph (a) of this section that is not reported on the Notice of Lender Selection form, it shall report such information to the lender and REA.

(c) REA will determine whether such ownership represents an actual or potential conflict of interest.

§ 1712.64 Debarment and suspension.

Lenders are required to comply with certain Federal requirements on debarment and suspension as set forth in 7 CFR part 3017.

§ 1712.65 Borrower's loan guarantee application.

(a) *All borrowers.* All loan guarantee applications shall be submitted to REA. The applications of all borrowers shall include the following:

(1) *Transmittal letter.* A letter signed by the borrower's manager addressing the following items:

(i) The need for flood hazard insurance;

(ii) Breakdown of funds by State;

(iii) A listing of pending litigation, including levels of related insurance coverage and the potential effect on the borrower;

(iv) A list of actions threatened by third parties that would adversely affect the borrower's financial condition, such as actions affecting service territory, loads or rates; and

(v) A list of pending regulatory proceedings.

(2) *Broad resolution.* This certified document is the formal request by the borrower's board of directors for a loan guarantee and any other concurrent financing.

(3) *Notice of Lender Selection.* This notice, as set forth in § 1712.66, describes the lender's qualifications and its loan proposal.

(4) *REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers.* This form lists the construction, equipment, facilities and other cost estimates from the construction work plan or engineering and cost studies, and the sources of financing for each component. The date on page 1 of the form is the beginning date of the loan period. Form 740c also includes the following:

(i) *Description of funds and materials.* This description details the availability of materials and equipment, general funds, and unadvanced funds from prior loans to arrive at the amount of such materials and funds to be applied against the capital requirements estimated for the loan period. Refer to REA Form 740c, Section B.

(ii) *Reimbursement schedule.* This schedule lists the date, amount and identification number of each inventory of work orders and special equipment summary that form the basis for the borrower's request for reimbursement of general funds on the REA Form 740c.

(5) *REA Form 740g, Application for Headquarters Facilities.* This form lists the individual cost estimates from the construction work plan or other engineering study that support the need for the items included and funding requested for any headquarters office, warehouse, service or garage facilities shown on the REA Form 740c.

(6) *Financial and statistical report.* These data shall be prepared on REA Form 7 for distribution borrowers or on REA Form 12 for power supply borrowers. The form shall contain the most recent data available, which shall not be more than 60 days old when received by REA. The date of this form shall be the same as the date on page 1 of the REA Form 740c.

(7) *Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.* This certifies that the borrower will comply with certain regulations on debarment and suspension required by Executive Order 12549, "Debarment and Suspension." See 7 CFR Part 3017.

(8) *Uniform Relocation Act Assurance Statement.* This assurance, which need not be resubmitted if previously submitted, provides that the borrower shall comply with 49 CFR Part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987.

(9) *Lobbying.* The following information on lobbying is required pursuant to 7 CFR part 3018:

(i) *Statement for Loan Guarantees and Loan Insurance.* This statement certifies that the borrower shall comply with requirements with respect to restrictions on lobbying activities.

(ii) *Standard Form LLL—Disclosure of Lobbying Activities.* This form enables those borrowers engaged in lobbying activities to disclose such activities.

(10) *Federal debt delinquency requirements.* The following documents are required:

(i) *Report on Federal Debt Delinquency.* This report sets forth whether or not a borrower is delinquent on any Federal debt.

(ii) *Certification Regarding Federal Government Collection Options.* This certifies that a borrower has been informed of the collection options the Federal government may use to collect delinquent debt. The Federal government is authorized by law to take any or all of the following actions if a borrower's loan payments become delinquent or the borrower defaults on a loan:

(A) Report the borrower's delinquent account to a credit bureau.

(B) Assess additional interest and penalty charges for the period of time that payment is not made.

(C) Assess charges to cover additional administrative costs incurred by the government to service the borrower's account.

(D) Offset amounts owed by the government to the borrower under other Federal programs.

(E) Refer the borrower's debt to the Internal Revenue Service for offset against any income tax owed the borrower.

(F) Refer the borrower's account to a private collection agency to collect the amount due.

(G) Refer the borrower's account to the Department of Justice for litigation in the courts.

(11) *Standard Form 100—Equal Employment Opportunity Employer Report EEO-1.* This form, required by the Equal Employment Opportunity Commission, sets forth employment data for borrowers with 100 or more employees, see 29 CFR 1602.7 through 1602.14. A copy of this form, as submitted to the Department of Labor, is to be included in the application for a guaranteed loan.

(12) *Articles of incorporation and bylaws.* The following are required, if they have been amended since the last loan application submitted to REA:

(i) The articles of incorporation, as filed with the Secretary of State, setting forth the borrower's corporate purpose.

(ii) The bylaws, as adopted by the borrower's board of directors, setting forth the manner by which the borrower's organization will be governed and regulated.

(13) *State regulatory approvals.* In states having jurisdiction, the borrower must provide satisfactory evidence based on the information available, such as an opinion of counsel, that the state regulatory authority will not exclude from the borrower's rate base any of the facilities included in the loan request, or otherwise prevent the borrower from charging rates sufficient to repay with interest the debt incurred for the facilities.

(14) *Status of equity development plan.* Borrower shall report the status of its equity development plan, as required by REA regulations, if such status has not been reported in the past 12 months.

(15) *Form of opinion of counsel.* Borrower shall submit a copy of the form of borrower's opinion of counsel that shall be given in connection with the loan transaction.

(16) *Additional supporting data.* Additional supporting data may be requested by REA depending on the individual application or conditions, such as in the case of acquisitions, headquarters facilities, generation or transmission facilities, large power loads or special loads.

(b) *Distribution borrowers.* In addition to the items in paragraph (a) of this section, loan applications submitted by a distribution borrower shall include the following:

(1) *Retail rates.* The borrower shall explain any recent or planned changes in retail rates, the status of any pending rate cases before a state regulatory authority, and any other pertinent rate information.

(2) *Area coverage and line extension policies.* If there had been any change in policy since the last loan application submitted to REA, the borrower shall

submit the board of director's approved policy on area coverage and line extensions.

(c) *Primary support documents.* In addition to the information required in paragraphs (a) and (b) of this section, all borrowers must also provide REA with the following primary support documents:

(1) The following documents shall be submitted to REA for approval prior to submission of the loan applications:

(i) *Power requirements study.* This study shall meet the requirements of REA regulations.

(ii) *Board resolution adopting power requirements study.* This certified resolution indicates the board of directors' approval of the study.

(iii) *Construction work plan and/or engineering and cost studies.* These shall meet the requirements set forth in REA regulations.

(iv) *Board resolution adopting construction work plan and/or engineering and cost studies.* This certified resolution indicates the board of directors' approval of the plan or studies.

(v) *Borrower's environmental report.* This shall meet the requirements of 7 CFR part 1794.

(vi) *Board resolution adopting borrower's environmental report.* This certified resolution indicates the board of directors' approval of the report.

(2) The following shall be submitted to REA with the loan application:

(i) *Long range financial forecast.* This forecast shall meet the requirements set forth in REA regulations.

(ii) *Board resolution adopting the long range financial forecast.* This certified resolution indicates the board of directors' approval of the forecast and directs management to take whatever steps may be necessary, including the filing for rate increases, to achieve the TIER goals set forth in the forecast.

(d) If the lender requests, the borrower shall make any or all of the information required by this section available to the lender.

(e) If any of the information required by this section has been submitted to REA as part of a request for a concurrent loan, such information need not be resubmitted.

(f) If all of the information required by this section, in form and substance satisfactory to REA, has not been provided to REA within 10 months of receipt of the borrower's transmittal letter requesting the loan guarantee, REA will notify the borrower and/or the lender in writing of the items remaining to be completed. If said items are not completed within 2 months of such notification, REA may, in its discretion, cancel the application. If an application is cancelled, a new application for the same loan purposes will be accepted by REA if satisfactory evidence is provided that all of the information required by this section will be submitted to REA within a reasonable time frame.

(Approved by the Office of Management and Budget under control numbers 0572-0032 and 0572-0017)

§ 1712.66 Notice of lender selection.

(a) Borrowers must submit a Notice of Lender Selection to REA setting forth the lender's qualifications and the lender's loan proposal. The notice must be signed by the lender and the borrower. The Notice of Lender Selection shall be prepared using appendix C of this part as a guide to the extent practicable.

(b) REA encourages borrowers to make a lender selection prior to the submission of an application for a loan guarantee so that the Notice of Lender Selection can be submitted with the borrower's application. The notice shall provide the following information:

(1) The lender's current interest rates and proposed interest rate terms;

(2) The basic terms and conditions of the lender's loan;

(3) Potential conflicts of interest between the borrower and lender;

(4) Credit reports on the borrower, if available, obtained from national or regional credit bureaus or similar organizations, and the lender's assessment of said reports;

(5) Fees and charges to be assessed by the lender;

(6) A description of the lender's loan servicing plans;

(7) The lender's financial analysis and evaluation of the borrower and the proposed loan;

(8) Any plans by the lender to market, by means of an assignment of the guarantee, all or part of the guaranteed portion of the loan;

(9) Evidence of the lender's regulation by the appropriate authorities, including a description of its current standing with those authorities and evidence of the lender's fulfillment of licensing and other requirements;

(10) Evidence of the lender's financial strength and capitalization;

(11) A draft of the Loan Note;

(12) A copy of the form of loan agreement to be used, if any; and

(13) The form of lender's opinion of counsel that shall be given in connection with the loan transaction.

(c) If evidence required in paragraphs (b)(9) and (b)(10) of this section have been provided to REA within the 12 months preceding REA receipt of the Notice of Lender Selection, such evidence need not be resubmitted if there has been no material change in conditions.

(d) If a borrower has not made a lender selection at the time of submitting an application for a loan guarantee, the borrower shall contact a prospective lender regarding the lender's proposed rate of interest, loan maturity and debt repayment method on similar transactions, and include the lender's written response with the borrower's application for a loan guarantee. Such information shall be used by the borrower in its long range financial forecast included with the application.

(e) REA will determine the lender's qualification based on the information submitted by the lender as required by this subpart. REA will provide written notification of its approval or disapproval of the borrower's choice of lender to the borrower and the lender.

(f) The lender shall notify REA and the borrower promptly of any material changes in the information contained in the Notice of Lender Selection submitted to REA.

(g) Any changes in lender selection must be approved by REA and supported by an amendment to the Notice of Lender Selection form.

(h) REA will not conditionally commit to guarantee a loan until the borrower has selected a lender and submitted to REA a complete Notice of Lender Selection, in form and substance satisfactory to REA.

§ 1712.67 Lender's loan note.

(a) A loan guaranteed by REA shall be represented by a single Loan Note that shall be prepared by the lender and executed by the borrower.

(b) Appendix F shall be used to the extent practicable in preparing the Loan Note. The Loan Note and any Loan Note amendments are subject to REA written approval.

(c) A completed draft of the note shall be submitted with the Notice of Lender Selection, or as soon thereafter as practicable. REA will notify the borrower and the lender of REA's approval or disapproval of the draft note. If material changes are made in the draft Loan Note after it has been approved by REA, the lender shall clearly identify the changes to REA, with evidence of the borrower's concurrence with the changes, when the final executed Loan Note is submitted to REA for approval.

(d) Each Loan Note guaranteed by REA shall include a Loan Note Guarantee using appendix E as a guide to the extent practicable.

(e) The Loan Note shall include a date beyond which the lender shall not advance any funds under the note. This date is subject to REA approval and to the provisions of § 1712.59.

(f) Loan Notes may be amended, subject to REA approval, but new Loan Notes may not be issued.

§ 1712.68 Lender's loan agreement.

(a) Loans guaranteed by REA may be represented by a loan agreement, in form and substance satisfactory to REA, executed between the lender and the borrower. Such loan agreements may include, for example, provisions on interest rates, loan repayment, advance of funds procedures, approvals required by law, special covenants and conditions, prepayments, and events of default.

(b) A completed draft of the loan agreement shall be submitted with the Notice of Lender Selection, or as soon thereafter as practicable. REA will notify the borrower and the lender of REA's approval or disapproval of the draft contract. If material changes are made in the draft contract after it has been approved by REA, the lender shall clearly identify the changes to REA, with evidence of the borrower's concurrence with the changes, when the final executed loan agreement is submitted to REA for approval.

§ 1712.69 Lender's agreement.

(a) The Lender's Agreement is the executed agreement between REA and the lender setting forth primarily the lender's rights and obligations with respect to the guaranteed loan and the manner in which REA will make payments to the lender under the Loan Note Guarantee. The Lender's Agreement in appendix A of this part should be used as a guide to the extent practicable.

(b) Subsequent to REA's approval of a borrower's choice of private lender, the lender shall prepare a draft of the Lender's Agreement for REA's review and approval. Evidence of REA's approval of this draft agreement will be provided in writing to the lender, with a copy to the borrower.

(c) If material changes are made in the draft Lender's Agreement after it has been approved by REA, the lender shall clearly identify the changes to REA before the final agreement is submitted to REA for approval.

(d) Lenders will be required to follow existing REA policies and procedures, as well as future policies and procedures, provided such future policies and procedures are not inconsistent with the express provisions of the Lender's Agreement executed by the lender and REA.

(e) Other provisions of the Lender's Agreement are set forth in 7 CFR part 1719, subpart B.

§ 1712.70 Conditional commitment to guarantee.

(a) REA will commit to guarantee a loan, subject to conditions to be met by the borrower or lender, when the administrative findings applicable to the loan are approved by REA.

(b) REA's Conditional Commitment to Guarantee, using appendix D of this part as a guide to the extent practicable, will be provided to the lender, with a copy to the borrower. Such commitment will include the following:

(1) The interest rate provisions of the loan, the loan amount and purposes, and the conditions precedent to the execution of a Loan Note Guarantee by REA and the advance of guaranteed funds by the lender.

(2) A request that the lender and borrower each sign the "Acceptance of Conditions" section of the Conditional Commitment to Guarantee and return it to REA by the date specified indicating their acceptance of the stated terms and conditions and requesting the issuance of a Loan Note Guarantee by REA.

(3) A request that the lender begin preparing in final form the Lender's Agreement and Loan Note, along with the loan agreement and Assignment Guarantee Agreement, as applicable.

(c) The Conditional Commitment to Guarantee shall be valid for a period not to exceed one year from the date of execution, unless extended in writing by REA before the expiration date.

(d) If REA determines it is unable to guarantee a loan, REA will notify the borrower and lender in writing. Such notification will include the reasons for denial of the guarantee.

§ 1712.71 Changes in conditions.

(a) *Changes in loan terms and conditions.* Changes in contractual conditions regarding interest rate provisions or other terms and conditions, after execution of the Conditional Commitment to Guarantee, may be made for good cause if acceptable to both the lender and the borrower, and prior written approval is obtained from REA.

(b) *Change of lender.* (1) With REA's prior written approval, a new lender may be substituted prior to execution of the Loan Note Guarantee. Subsequent to such execution, a new lender will not be approved unless the original lender has discontinued lending operations, or is unable to make the loan or satisfactorily fulfill its obligations under the Lender's Agreement. New lenders must meet the requirements of this subpart.

(2) The borrower shall provide in writing to REA, with a copy to the new lender, the reasons for the substitution and any proposed changes in the conditions of the loan.

(c) *Criteria for approval.* In deciding whether or not to approve changes authorized by this section, REA will consider whether the changes will increase REA's guarantee risk or otherwise adversely affect the government's interests, and whether the changes are essential to enable the borrower to obtain a loan from an eligible lender.

§ 1712.72 Documents summary.

For the convenience of the reader, this section summarizes the main documents set forth in this subpart:

(a) *Borrower's Loan guarantee application (§ 1712.65).* The application is submitted by the borrower to REA and contains most of the documents and other information required for REA to approve a loan guarantee. Information provided REA in connection with a concurrent loan is not required to be resubmitted.

(b) *Notice of Lender Selection (§ 1712.66).* This document, signed by the lender and the borrower, sets forth the lender's qualifications and the basic terms and conditions of the lender's proposed loan. This notice is submitted to REA by the borrower, preferably at the same time as the loan guarantee application.

(c) *Conditional Commitment to Guarantee (§ 1712.70).* REA issues this commitment to the lender when REA determines that a loan guarantee can be approved if certain conditions are met by the borrower and/or lender.

(d) *Lender certification (§ 1712.73).* The lender submits this statement to REA before the Lender's Agreement, Loan Note, Assignment Guarantee Agreement, and loan agreement are executed in final form to certify that these documents are the same in form and substance as the most recent draft of these documents approved by REA.

(e) *Loan Note (§ 1712.67).* This is the promissory note issued by the borrower to the lender, which sets forth the obligation of the borrower to repay the loan with interest. A draft of the Loan Note is submitted by the lender to REA for approval at the same time as the Notice of Lender Selection, or as soon thereafter as practicable.

(f) *Loan agreement (§ 1712.68).* In addition to the Loan Note, the borrower and the lender may execute a loan agreement to set forth certain provisions

of the loan, such as those relating to interest rates, loan repayment, advance of funds procedures, etc. Procedures for REA approval of a loan agreement are the same as for the Loan Note.

(g) *Loan Note Guarantee (§ 1712.67).* This is the contract of guarantee, prepared by the lender, which states the terms and conditions of REA's guarantee of the lender's loan.

(h) *Lender's Agreement (§ 1712.69).* This contract between REA and the lender sets forth primarily the lender's rights and obligations with respect to the guaranteed loan and the manner in which REA will make payments to the lender under the Loan Note Guarantee. After REA has approved the borrower's choice of lender, the Lender's Agreement is prepared by the lender and submitted to REA for approval.

(i) *Assignment Guarantee Agreement (§ 1712.62).* This agreement is required if the lender intends to assign all or part of the guaranteed portion of the loan. It is prepared by the lender and is executed by the lender, the holder, and REA.

§ 1712.73 Execution of final documents.

(a) The process to execute final loan and security documents will begin after the borrower and lender sign the "Acceptance of Conditions" section of the Conditional Commitment to Guarantee and return it to REA. The process must be completed before expiration of the Conditional Commitment to Guarantee as provided for in § 1712.70. Before a Loan Note Guarantee will be issued, the lender must certify to REA that there has been no material adverse change in the Borrower's financial condition nor any other material adverse changes in the Borrower's condition since the date of submission of the loan guarantee application to REA. In any such change, in the opinion of REA, threatens loan feasibility or loan security, regardless of when the change occurred or when REA became aware of it, REA is under no obligation to issue a Loan Note Guarantee.

(b) All final documents shall be prepared by the lender and submitted to REA for approval. Said documents must either be materially the same in form and substance as the draft documents previously approved by REA, or any material changes must be clearly identified to REA.

(c) Borrowers under the jurisdiction of a state regulatory authority may obtain drafts of the loan and security documents in advance from the lender in order to begin proceedings with the state authority.

(d) The lender will be responsible for:

(1) Arranging for and ensuring the proper execution of the loan and security documents by all parties;

(2) Arranging for and ensuring the proper recording of all security instruments, if applicable; and

(3) Providing to REA all said documents, evidence of proper execution and recording, and opinions of counsel, in form and substance satisfactory to the Administrator, regarding the loan transaction for both the lender and borrower.

(e) When REA has determined that all of the required loan and security documents and associated evidence of execution and recording are satisfactory, REA will execute the Lender's Agreement, the Loan Note Guarantee, and if applicable, the Assignment Guarantee Agreement.

(f) The original of the executed Loan Note Guarantee, Loan Note, Lender's Agreement, and any loan agreement will be provided to the lender. The original of the executed Assignment Guarantee Agreement, if applicable, will be provided to the lender for transmittal to the holder.

(g) If REA determines that it cannot execute the Loan Note Guarantee or other related documents because all requirements have not been met, REA will inform the lender and borrower of the reasons and establish a reasonable period for the lender and the borrower to resolve the problems, if possible.

§ 1712.74 Access to records of lender.

Upon request, the lender shall permit representatives of REA and other agencies of the Federal government to inspect and make copies of any of the records of the lender pertaining to REA guaranteed loans. Such inspection and copying may be made during the lender's regular office hours, or any other time the lender and the government find convenient.

§ 1712.75 Loan documentation.

The document examples set forth in appendices A through F of this part shall be used as a guide to the extent practicable for loans guaranteed under this subpart.

§§ 1712.76–1712.99 [Reserved]

Appendix A to Part 1712—Lender's Agreement

Type of Loan: ____________
REA Loan No. ____________
Applicable: 7 CFR Parts 1712, 1719, 1739 & 1746

____

(Lender) of ____________
has made a loan to ____________
(Borrower) in the principal amount of $________ as evidenced by a note (include Bond as appropriate) described as follows:

____

The United States of America, acting through the Rural Electrification Administration (REA) has entered into a Loan Note Guarantee or has issued a Conditional Commitment to Guarantee to enter into a Loan Note Guarantee with the Lender applicable to such loan to guarantee repayment of 90 percent of the outstanding principal advanced and interest owned thereon. The terms of the Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan, and to facilitate the marketability of the guaranteed portion of the loan, the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed 90 percent of the principal advanced and accrued interest on the above indebtedness.

II. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender had actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which REA acquires knowledge of the foregoing. Negligent servicing is defined as the failure to perform those services which a reasonable prudent Lender would perform in servicing its portfolio of loans that are not guaranteed. The term includes not only a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III. *Lender's Assignment of Guaranteed Portion of Loan.*

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portions of the loan to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the items of the notes.

B. The Lender may assign all or a part of the guaranteed portion of the loan to not more than one Holder. The assignment is subject to REA approval, and an "Assignment Guarantee Agreement" must be used. The Holder, and any subsequent Holder, upon written notice to Lender and REA, may reassign to not more than one assignee all, but not part, of its unpaid guaranteed portion of the loan. Upon such

notification the assignee shall succeed to all rights and obligations of the Holder thereunder.

C. When a guaranteed portion of a loan is assigned to a Holder, the Holder shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased, but not including those rights conveyed solely by the security instrument. Lender will remain bound to all the obligations under the Loan Note Guarantee and this agreement and the applicable REA program regulations found in 7 CFR Parts 1712, 1719, 1739 and 1746 and to future REA program regulations not inconsistent with the express provisions hereof.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of 7 CFR 1712 or 1739 and in accordance with the terms of the Conditional Commitment to Guarantee.

V. Lender agrees to obtain REA approval to advance loan funds prior to each advance of funds.

VI. The Lender certifies that it has disclosed in writing to REA all information concerning actual or potential conflicts of interest as required by 7 CFR part 1712 or 1739.

VII. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VIII. The Lender certifies that a Loan Note concurred in by REA has been or will be signed with the Borrower.

IX. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

b. Disposition of the guaranteed portion of the loan may be made prior to full disbursement of loan funds, only with the prior written approval of REA. Subsequent to full disbursement, the guaranteed portion of the loan may be disposed of as provided herein.

C. It is the Lender's responsibility to see that the borrower has obtained any required approvals of the loan from a state regulatory authority.

D. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, security instruments, and any loan agreement or supplemental agreements and notifying REA and the Borrower in writing of any violations. None of the aforesaid instruments will be altered without REA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder its pro rata share thereof determined according to its interest in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or written down only with agreement of the Lender and Holder and only with REA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party and Fidelity Bond coverage if required.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with section 2 of the Loan Note Guarantee, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of REA; proceeds from the sale or other disposition of collateral are applied in accordance with section 2 of the Loan Note Guarantee, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures may, with prior written approval of REA, be used to acquire property of similar nature; and the Borrower complies with all laws and ordinances applicable to the loan and the collateral.

6. Assuring that if corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to REA at such time and frequency as required by the Conditional Commitment to Guarantee or any loan agreement. In the case of guarantees secured by collateral, assuring that the priority and validity of the lien is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by REA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by REA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower or any party liable is not released from liability for all or any part of the loan except in accordance with REA regulations.

10. Providing the Director, Fiscal Accounting Division, REA with a loan status report within 10 working days of the end of each quarter (March 31, June 30, September 30, and December 31).

11. Obtaining from the Borrower periodic financial statements under the following schedule: ____________.

Lender is responsible for analyzing the financial statements, taking any servicing actions, and reporting such actions to the REA Area Operations Branch responsible for the loan.

12. Notifying the REA Area Operations Branch promptly of a prepayment of all or a portion of the Loan Note by the borrower.

13. Assuring that the funds are used for the purposes approved in the loan, except that the lender may rely on REA for said assurance if REA has agreed in advance in writing.

E. The lender shall reimburse REA for any payments made to a holder under the guarantee on account of negligent servicing.

X. *Default.*

A. The Lender shall notify the REA Area Operations Branch promptly, in writing, when any default in the payment of principal or interest due on a loan has been in effect for five calendar days or more. In the case of such monetary defaults, the lender shall contact the borrower to determine the nature of the problem, and subsequently submit the following to the REA Area Operations Branch:

1. A report, submitted promptly, setting forth the lender's views as to the reasons for the default, how long the borrower is expected to be in default, and the corrective actions being taken by the borrower to achieve a current debt service position, and

2. A proposal, submitted promptly for REA's approval, outlining actions to be taken by the lender and the borrower to cure the default if the default has been in effect for 30 calendar days or more. Such proposal must be delivered to REA within 35 calendar days of the date of the default.

B. The lender shall take all reasonable steps to cure the default as soon as practicable. Actions taken by the Lender with written concurrence of REA may include but are not limited to the following or any combination thereof:

1. Deferment of principal payments subject to rights of any Holder.

2. An additional unguaranteed temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan, subject to rights of any Holder.

4. Transfer and assumption of the loan in accordance with REA regulations.

5. Reorganization.

6. Liquidation.

7. Changes in interest rate with REA's, Lender's, and the Holder's approval, provided such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

C. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

D. The Holder has the right to request that the Lender repurchase the unpaid guaranteed portion of the loan when (a) the borrower is in default not less than 60 days on principal and/or interest due on the loan, or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 days of its receipt. If the Lender agrees to repurchase, repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest, less the Lender's servicing fee. Holder will concurrently send a copy of demand to REA. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem,

and to permit the borrower to cure the default where reasonable. The Lender will promptly notify the Holder and REA of its decision regarding repurchase.

E. If the borrower is in default on its loan payments and the Lender does not repurchase the Holder's portion as provided in paragraph D, within thirty (30) days after written demand to REA from Holder, REA will either (a) pay to Lender any shortfall in principal and interest payments by the borrower on the guaranteed portion held by the Holder, as due, to be remitted by Lender to Holder, or (b) purchase the unpaid principal balance of the guaranteed portion held by the Holder, together with accrued interest to date of repurchase, less Lender's servicing fee. Under option (b) of this paragraph, the Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. REA's obligation to Holder applies only in the case where the Borrower is in monetary default, and does not apply if the Borrower is not in default and the Lender fails to remit payment to Holder.

The demand to REA shall include a copy of the written demand made upon the Lender. The Holder or its duly authorized agent will also include evidence of its right to require payment from REA. Such evidence will consist of the original of the Assignment Guarantee Agreement properly assigned to REA without recourse including all rights, title and interest in the loan. REA will be subrogated to all rights of Holder. The Holder will include in its demand the amount due, including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise determined by REA, such proposed payment will not be later than 30 days from the date of demand.

REA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide REA with the information necessary for REA determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved before payment will be approved. REA will notify both parties, who must resolve the conflict to REA's satisfaction, before payment by REA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the necessary information, REA will review the demand and determine if payment is warranted, and if so, pay the Lender, who shall in turn promptly pay the Holder.

F. If the Lender holds any part of the guaranteed portion of the loan and a monetary event of default has been in effect for 180 days from the payment due date, and the Lender has not been able to work out a satisfactory cure of the default, REA will at its option make payment to the Lender under one of the methods set forth below within 30 days of written demand by the Lender, provided the Lender has met all of its obligations under the Lender's Agreement:

1. REA will pay the outstanding principal balance, plus accrued interest, that the Borrower has failed to pay with respect to the portion of the guaranteed loan held by the Lender. In this case, the guarantee will not cover any note interest accruing after 90 days from the date of the demand letter by the Lender to REA.

2. REA will pay that portion of principal and interest payments owed on the guaranteed portion of the loan held by the lender that the borrower has failed to pay, plus such principal and interest payments owed on said guaranteed portion, as due, that the borrower fails to pay in the future.

G. Lender consents to the purchase by REA and agrees to furnish on request by REA a current statement, certified by an appropriate authorized officer of the Lender, of the unpaid principal and interest then owed by the Borrower on the loan and the amount then owed to any Holder. Lender agrees that any purchase by REA does not change, alter or modify any of the Lender's obligations to REA arising from said loan or guarantee, nor does it waive any of REA's rights against Lender, and that REA will have the right to set-off against Lender all rights inuring to REA as the Holder of this instrument against REA's obligation to Lender under the Loan Note Guarantee.

H. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When REA repurchases from a Holder, REA will pay the Holder only the amounts due the Holder. REA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged REA and no such fee is collectible from REA.

I. Lender may also repurchase the guaranteed portion of the loan pursuant to section 12 of the Loan Note Guarantee.

XI. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with REA. If REA concurs that the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will promptly notify the Lender and the matter will be handled as follows:

A. *Lender's proposed method of Liquidation.* Within 30 days after the decision to liquidate, the Lender will advise REA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide REA with:

1. Such proof as REA requires to establish the Lender's ownership of the guaranteed loan promissory note and related security intruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory, accounts receivable, corporate guarantees, and other existing and contingent assets, and advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal loan balance including accrued interest is $200,000 or less, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of $200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and REA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by REA and the Lender.

B. *REA's Response to Lender's Liquidation Plan.* REA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If REA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should REA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between REA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should REA opt to conduct the liquidation, REA will proceed as follows:

1. The Lender will transfer to REA all rights and interest necessary to allow REA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by REA.

2. REA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to REA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or REA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration documents will be sent to REA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide REA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When REA is the holder of a portion of the guaranteed loan, the Lender will transmit to REA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc., pursuant to the priorities set forth in section 2 of the Loan Note Guarantee. When REA liquidates, the Lender will be provided with similar reports on Request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. REA will have the right to recover losses paid under the guarantee from any party liable.

1. Estimated loss payments may be approved by REA after the Lender's liquidation plan has been approved by REA. Payments will be made in accordance with applicable REA procedures.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to REA an estimate of loss that will occur in connection with liquidation of the loan. If REA agrees to pay an estimated loss settlement, the Lender shall apply such amount due to the outstanding principal balance owed on the guaranteed debt. The appraisal value of the collateral will be used to determine the estimated loss. Once this claim is approved by REA, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable REA procedures.

Within 30 days of REA's approval of the loss estimate, REA will request the issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted by the Lender to REA.

3. After the Lender has completed liquidation, REA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If REA has any questions regarding the amounts set forth in the final report of loss, it will investigate the matter. The Lender will make its records available to and otherwise assist REA in making the investigation. If REA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When REA finds the final report of loss to be proper in all respects, it will be tentatively approved.

4. When the Lender has conducted liquidation and after the final report of loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, REA will request the issuance of a Treasury check in payment of the additional amount owed by REA to the Lender.

b. If the loss is less than the estimated loss payment, the Lender will reimburse REA for the overpayment plus interest at the note rate from date of payment.

5. If REA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. If the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by REA when the final report of loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by REA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If REA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date REA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender, provided it proceeds expeditiously with the liquidation plan approved by REA.

G. *Application of REA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by REA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss the Lender will notify the Borrower that the loss payment has been so applied.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with REA's written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will obtain REA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by REA within 60 days after the review of the accounting of the collateral.

XII. *Protective Advances.*

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). REA's written authorization is required on all protective advances. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rents, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. *Additional Loans or Advances.*

The Lender will not make additional expenditures or new loans without first obtaining the written approval of REA even though such expenditures or loans will not be guaranteed.

XIV. *Future Recovery.*

After a loan has been liquidated and final loss has been paid by REA, any future funds that may be recovered by the Lender will be prorated between REA and the Lender. REA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. *Transfer and Assumption Cases.*

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor is released from personal liability, the Lender, if it holds the guaranteed portion, may file a report of estimated loss to recover its pro rata share of the actual loss at that time.

XVI. *Bankruptcy.*

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 9, 11, 12 or 13 of the Bankruptcy Code (11 U.S.C. 101 et seq.), payment of loss claims may be made as proved in this section XVI. For a Chapter 7 bankruptcy or liquidation plan in a chapter 11 bankruptcy, only paragraph XVI B.3. is applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can be made only after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by REA at its option in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing REA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any Court ordered interest rate reduction during the term of the reorganization plan.

b. The estimated loss claim, as well as any revisions to this claim, will be accompanied by necessary legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will report to REA on the status of the borrower and the loan pursuant to REA instructions.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B.1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction that extends beyond the period of the reorganization plan.

3. *Final Loss Payments.*

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, REA will close out the estimated loss account at the time notification of payment in full is received.

4. *Payment Application.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct

the payments to be applied in a different manner, the Lender will immediately notify the REA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the Lender will provide REA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by REA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse REA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

XVII. *Other Requirements.*

This agreement is subject to all the applicable provisions of 7 CFR Parts 1712, 1719, 1739 and 1746 and any future amendments of these regulations not inconsistent with this agreement.

XVIII. *Execution of Agreements.* If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon REA with respect to the execution of such guarantee. REA in no way warrants that such a guarantee has been or will be executed.

XIX. *Notices.*

All notices and actions will be initiated through the REA Area Operations Branch.

Dated this ______ day of ______, 19___.

Lender: United States of America, Rural Electrification Administration.

Attest: (Seal). ______

By ______

Title ______

By ______

Title ______

Appendix B to Part 1712—Assignment Guarantee Agreement

Type of Loan: ______

REA Loan No. ______

Applicable: 7 CFR 1712, 1719, 1739 & 1746

______

of ______

(Lender) has made a loan to ______ in the principal amount of $ ______ as evidenced by a note dated ______ The United States of America, acting through the Rural Electrification Administration (REA) entered into a Loan Note Guarantee with the Lender applicable to such loan to guarantee the loan not to exceed ______% of the amount of the principal advanced and any interest due thereon as provided therein.

______

of ______

(Holder) desires to purchase from Lender ______% of the guaranteed portion of such loan. Copies of Borrower's note and the Loan Note Guarantee are attached hereto as a part hereto.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now outstanding is $______. Lender hereby assigns to Holder ______% of the guaranteed portion of the loan representing $______ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth.

2. Loan servicing. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security.

The Lender will receive all payments on account of principal of, or interest on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. Servicing Fee. Holder agrees that Lender will retain a servicing fee of ______ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. Purchase by Holder. The portion purchased by the Holder must be from the guaranteed portion of the loan. Subject to the limitations of 7 CFR 1712.55 of 1739.55, the Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the applicable program regulations found in 7 CFR Parts 1712, 1719, 1739 and 1746 now in effect, and future REA program regulations not inconsistent with the provisions of said guarantee.

5. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

6. Exclusion of Tax-Exempt Financing. A loan is not eligible for a guarantee if the income from the loan or the income from obligations issued by the owner of the loan (Lender or Holder), when the obligations are created by the loan, is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986. The Lender shall certify to REA, and each subsequent Holder of the loan shall certify to the seller, that it is in compliance with this section. The loan guarantee and the Assignment Guarantee Agreement shall be null and void with respect to the current owner of a guaranteed portion of the loan if said owner is in violation of this section.

7. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by REA or any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse REA for any payment made by REA to Holder that REA would not be required to make if such lender had held the guaranteed portion of the loan. The Holder, upon written notice to the Lender and REA, may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to this form to effectuate the transfer.

8. Repurchase by the Lender (Defaults). The holder has the right to request that the Lender repurchase the unpaid guaranteed portion of the loan from the Holder within 30 days of written demand by the Holder when: (a) the borrower is in default not less than 60 days on principal and/or interest due on the loan, or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 days of its receipt. If the Lender agrees to repurchase, repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest, less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder will concurrently send a copy of demand to REA. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder and REA of its decision regarding repurchase.

9. REA Purchase or Payments on Guaranteed Portion Held by Holder. If the borrower is in default on its loan payments and the Lender does not repurchase the Holder's portion as provided in paragraph 8 hereof, within thirty (30) days after written demand to REA from Holder, REA will either (a) pay to Lender any shortfall in principal and interest payments by the borrower on the guaranteed portion held by the Holder, as due, to be remitted by Lender to Holder, or (b) purchase the unpaid principal balance of the guaranteed portion held by the Holder, together with accrued interest to date of repurchase, less Lender's servicing fee. In the case of option (b) herein, the Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. REA's obligation to Holder applies only in the case where the Borrower is in monetary default, and does not apply if the Borrower is not in default and the Lender fails to remit payment to Holder.

The demand to REA shall include a copy of the written demand made upon the Lender. The Holder or its duly authorized agent will also include evidence of its right to require payment from REA. Such evidence will consist of the original of the Assignment Guarantee Agreement properly assigned to REA without recourse including all rights, title and interest in the loan. REA will be subrogated to all rights of Holder. The Holder will include in its demand the amount due, including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise determined by REA, such proposed payment will not be later than 30 days from the date of demand.

REA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide REA with the information necessary for REA determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved before payment will be approved. REA will notify both parties, who must resolve the conflict to REA's satisfaction, before payment by REA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the necessary information, REA will review the demand and determine if payment is warranted, and if so, pay the Lender, who shall in turn promptly pay the Holder.

10. Lender's Obligations. Lender consents to the purchase by REA and agrees to furnish on request by REA a current statement, certified by an appropriate authorized officer of the Lender, of the unpaid principal and interest then owed by the Borrower on the loan and the amount then owed to any Holder. Lender agrees that any purchase by REA does not change, alter or modify any of the Lender's obligations to REA arising from said loan or guarantee, not does it waive any of REA's rights against Lender, and that REA will have the right to set-off against Lender all rights inuring to REA as the Holder of this instrument against REA's obligation to Lender under the Loan Note Guarantee.

11. Repurchase by Lender for Servicing. If in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion, less Lender's servicing fee. The Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the demand letter of the Lender or REA to the Holder requesting that the Holder tender its guaranteed portion.

a. The Lender will not repurchase from the Holder for arbitrage purposes or other purposes to further its own financial gain.

b. No repurchase will be made without REA written approval.

c. If the Lender does not repurchase the Holder's portion, REA at its option may purchase such guaranteed portion for servicing purposes.

12. Foreclosure. The parties owning the guaranteed portion and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

13. Reassignment. Holder upon written notice to Lender and REA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

14. Notices. All notice and actions will be initiated through REA at the following mailing address as of the date of this instrument:

____

____

Lender:

By ______________________________
Title ______________________________
Date ______________________________

Holder:

By ______________________________
Title ______________________________
Date ______________________________

United States of America, Rural Electrification Administration

By ______________________________
Title ______________________________
Date ______________________________

Appendix C to Part 1712—Notice of Lender Selection

Applicable: 7 CFR parts 1712, 1719, 1739 & 1746

A. Borrower:

Name: ______________________________
REA ID No. ______________________________
Address: ______________________________

____

Lender:

Name: ______________________________
Address: ______________________________

____

B. Terms and Conditions of Loan:

1. Amount: ______________________________
2. Term (yrs): ______________________________
3. Interest rate:

Fixed: ______________________________
Variable: ______________________________

If variable, state terms and base rate used to determine rate.

4. Prepayment penalty, if any: ______________________________

C. State whether the borrower, its principal officers, members of the board of directors, or members of the immediate families of said officials hold any stock or other evidence of ownership in the lender's organization. If so, give details.

D. State whether the lender or its principal officers hold any stock or other evidence of ownership in the borrower, other than patronage capital. If so, give details.

E. Lender's evaluation of credit reports on borrower obtained from national or regional credit bureaus. Enclose reports.

F. List any loan origination or other fees to be charged the borrower.

G. List any loan servicing fees to be charged a holder.

H. Describe loan servicing plans.

I. Lender's evaluation of (1) the borrower's financial condition, repayment ability, management capability, and past record, and (2) the feasibility of the loan.

J. Does lender plan to market the guaranteed portion of loan? Yes ______ No ______. Percentage of guaranteed portion to be marketed: ______%.

K. Regulatory Agencies: Is lender in good standing with all regulatory agencies to which it is subject? Yes ______ No ______. If no, explain.

L. List all regulatory agencies (national, state, or local) to which the lender is subject and explain if there are any pending matters with such agencies. Indicate if permits, licenses or clearances are necessary and their status.

M. If the lender is not regulated or examined by a Federal or state agency, submit evidence that lender has established qualification requirements for principal officers and staff, and has fidelity, and errors and omissions bonding.

N. Is the lender or any of its principals currently debarred or suspended from participation in a Federal government contract or delinquent on any obligation to the Federal Government? Yes ______ No ______. If yes, explain.

O. If, in addition to a Loan Note, a loan contract will be executed between the lender and borrower, enclose a copy of the proposed contract.

Borrower:

By: ______________________________
Title: ______________________________

Lender:

By: ______________________________
Title: ______________________________

Appendix D to Part 1712—Conditional Commitment to Guarantee

Borrower
Lender
Type of Loan
REA Loan No. ______________________________
State
Principal Amount of Loan

From an examination of information supplied by the Lender on the above proposed loan and other relevant information, it appears that a Loan Note Guarantee can be issued.

Therefore, the United States of America, acting through the Rural Electrification Administration (REA), hereby agrees that, in accordance with applicable provisions of the REA regulations published in the Code of Federal Regulations and related forms, it will execute the "Loan Note Guarantee," subject to the conditions and requirements specified herein and in said Guarantee and the applicable REA regulations.

The interest rate for the loan is ______________ percent.[1] If a variable rate is used, it cannot change more often than monthly and must be tied to a base rate, agreed to by the Lender, the Borrower and REA, that meets the requirements of regulation 7 CFR part 1712, for electric loans, or 7 CFR part 1739, for telephone loans.

The following conditions must be met before a Loan Note Guarantee will be issued:[2]

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR parts 1712 or 1739 that there has been no material adverse change in the Borrower's financial condition nor any other material adverse changes in the Borrower's condition since the date of submission of the loan guarantee application to REA. If any such change, in the opinion of REA, threatens loan feasibility or loan security, regardless of when the change occurred or when REA became aware of it, REA is under no obligation to issue a Loan Note Guarantee.

The Lender's certification must address all adverse changes and be supported by

[1] Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V".

[2] Insert any conditions that must be met by the borrower or the lender before a Loan Note Guarantee can be issued. If none, so indicate.

financial statements of the Borrower and any guarantors not more than 60 days old at the time of certification. For the purposes of this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by REA. Any negotiations concerning these conditions must be completed by that time. Acceptance shall be indicated by signing and returning to REA the attached "Acceptance of Conditions" form.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out in the Borrower's loan guarantee application:[3]

This conditional commitment will expire on ______ unless the time is extended in writing by REA, or the Lender notifies REA that it does not wish to obtain an REA guarantee.

United States of America

By: ______

Date: ______

Title: ______

Rural Electrification Administration

Conditional Commitment to Guarantee Acceptance of Conditions

To: Rural Electrification Administration (REA)[4]

The conditions of the Conditional Commitment to Guarantee including attachments are acceptable and the undersigned intend to proceed with the loan transaction and request issuance of a Loan Note Guarantee.

Name of Lender: ______

Date: ______

By: ______

(Signature of Lender)

______

(Name of Borrower)

Date: ______

By: ______

(Signature of Borrower)

Appendix E to Part 1712—Loan Note Guarantee

Type of Loan ______

Applicable: 7 CFR 1712, 1719, 1739 & 1746

Borrower:

Lender:

Tax No.:

Lender's Address:

State:

Date of Note:

REA Loan No.:

Lender's IRS ID:

Principal Amount of Loan: $______

The guaranteed portion of the loan is $______, which is ______ percent of loan principal. The loan is evidenced by the following note ______ (includes bond as appropriate).

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Rural Electrification Administration (REA) pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 901 et. seq.) and 7 CFR parts 1712 and 1719 or 1739 and 1746, does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder: 100 percent of any loss sustained by such Holder on the guaranteed portion of the loan and on interest due on such portion.

B. The Lender: the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note or by assumption agreement, and

b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with REA's authorization, including but not limited to advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note or assumption agreement and any interest due thereon.

If REA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest after the date REA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan, accruing interest shall be covered by this Loan Note Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by REA.

Definition of Holder

The Holder is the person or organization other than the Lender that holds all or part of the guaranteed portion of the loan pursuant to an executed Assignment Guarantee Agreement. Holders have no loan servicing responsibilities and they are prohibited from obtaining any part of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from gross income under Chapter I of the Internal Revenue Code of 1986.

Definition of Lender

The Lender is the organization making and servicing the loan guaranteed by REA under the provisions of 7 CFR parts 1712 and 1719 or 1739 and 1746.

Conditions of Guarantee

1. *Loan servicing*

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan.

2. *Priorities*

The entire loan will be secured by the same security. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion. In the event of monetary default by the borrower, any proceeds from liquidation of the loan and any payments made by the borrower will be applied first to any loan payments made by REA under the guarantee, including any penalties assessed by REA, then to any principal and accrued interest owed on the guaranteed portion of the loan, and then to any principal and accrued interest owed on the unguaranteed portion of the loan.

3. *Full Faith and Credit.*

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder had actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing or failure to obtain the required security, regardless of when REA acquires knowledge of the foregoing. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. *Rights and Liabilities.*

The guarantee and right of Holder to request purchase of its portion of the loan will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by REA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to REA any payment made by REA to Holder which, if such Lender had held the guaranteed portion of the loan, REA would not be required to make.

5. *Exclusion of Tax-Exempt Financing.*

A loan is not eligible for a guarantee if the income from the loan or the income from obligations issued by the owner of the loan (Lender or Holder), when the obligations are created by the loan, is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986. The Lender shall certify to REA, and each subsequent Holder of the loan shall certify to the seller, that it is in compliance with this section. The loan guarantee and any Assignment Guarantee Agreement shall be null and void with respect to the current owner of a guaranteed portion of the loan if said owner is in violation of this section.

6. *Payments.*

Lender will receive all payments of principal and/or interest on account of the entire loan and will promptly remit to Holder its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

[3] Explain any differences in REA-approved loan purposes or use of loan funds from those specified in the loan guarantee application. If none, so indicate.

[4] Return completed and signed copy of this acceptance statement to the REA Area Operations Branch.

7. *Protective Advances*

Protective advances made by the Lender and approved in advance by REA will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee, notwithstanding the guaranteed portion of the loan that is held by another.

8. *Repurchase by Lender*

The Holder has the right to request that the Lender repurchase the unpaid guaranteed portion of the loan when (a) the borrower is in default not less than 60 days on principal and/or interest due on the loan, or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 days of its receipt. If the Lender agrees to repurchase, repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest, less the Lender's servicing fee. The Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder will concurrently send a copy of demand to REA. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default where reasonable. The Lender will promptly notify the Holder and REA of its decision regarding repurchase.

9. *REA Purchase or Payments on Guaranteed Portion Held by Holder*

If the borrower is in default on its loan payments and the Lender does not repurchase the Holder's portion as provided in paragraph 8 hereof, within thirty (30) days after written demand to REA from Holder, REA will either (a) pay to Lender any shortfall in principal and interest payments by the borrower on the guaranteed portion held by the Holder, as due, to be remitted by Lender to Holder, or (b) purchase the unpaid principal balance of the guaranteed portion held by the Holder, together with accrued interest to date of repurchase, less Lender's servicing fee. In the case of option (b) herein, the Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. REA's obligation to Holder applies only in the case where the Borrower is in monetary default, and does not apply if the Borrower is not in default and the Lender fails to remit payment to Holder.

The demand to REA shall include a copy of the written demand made upon the Lender. The Holder or its duly authorized agent will also include evidence of its right to require payment from REA. Such evidence will consist of the original of the Assignment Guarantee Agreement properly assigned to REA without recourse including all rights, title and interest in the loan. REA will be subrogated to all rights of Holder. The Holder will include in its demand the amount due, including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise determined by REA, such proposed payment will not be later than 30 days from the date of demand.

REA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide REA with the information necessary for REA determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved before payment will be approved. REA will notify both parties, who must resolve the conflict to REA's satisfaction, before payment by REA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the necessary information, REA will review the demand and determine if payment is warranted, and if so, pay the Lender, who shall in turn promptly pay the Holder.

10. *REA Purchase or Payments on Guaranteed Portion Held by Lender*

If the Lender holds any part of the guaranteed portion of the loan and a monetary event of default has been in effect for 180 days from the payment due date, and the Lender has not been able to work out a satisfactory cure of the default, REA will at its option make payment to the Lender under one of the methods set forth below within 30 days of written demand by the Lender, provided the Lender has met all of its obligations under the Lender's Agreement:

a. REA will pay the outstanding principal balance, plus accrued interest, that the Borrower has failed to pay with respect to the portion of the guaranteed loan held by the Lender. In this case, the guarantee will not cover any note interest accruing after 90 days from the date of the demand letter by the Lender to REA.

b. REA will pay that portion of principal and interest payments owed on the guaranteed portion of the loan held by the lender that the borrower has failed to pay, plus such principal and interest payments owed on said guaranteed portion, as due, that the borrower fails to pay in the future.

11. *Lender's Obligations*

Lender consents to the purchase by REA and agrees to furnish on request by REA a current statement, certified by an appropriate authorized officer of the Lender, of the unpaid principal and interest then owed by the Borrower on the loan and the amount then owed to any Holder. Lender agrees that any purchase by REA does not change, alter or modify any of the Lender's obligations to REA arising from said loan or guarantee, nor does it waive any of REA's rights against Lender, and that REA will have the right to set-off against Lender all rights inuring to REA as the Holder of this instrument against REA's obligation to Lender under the Loan Note Guarantee.

12. *Repurchase by Lender for Servicing*

If in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion, less Lender's servicing fee. The Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the demand letter of the Lender or REA to the Holder requesting that the Holder tender its guaranteed portion.

a. The Lender will not repurchase from the Holder for arbitrage purposes or other purposes to further its own financial gain.

b. No repurchase will be made without REA written approval.

c. If the Lender does not repurchase the Holder's portion, REA at its option may purchase such guaranteed portion for servicing purposes.

13. *Custody of Unguaranteed Portion*

The Lender must retain all of the unguaranteed portion of the loan in its portfolio.

14. *When Guarantee Terminates*

The Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan, or (b) upon full payment of any loss obligation hereunder, or (c) upon written notice from the Lender to REA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to REA.

15. *Settlement*

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part ______ of Title 7 CFR in effect on the date of this instrument.

16. *Notices*

All notices and actions will be initiated through REA at the following mailing address as of the date of this instrument:

____

____

____

UNITED STATES OF AMERICA, Rural Electrification Administration

By: ______________________________

Title: ______________________________

Assumption Agreement by ______________

dated ______________________________

Assumption Agreement by ______________

dated ______________________________

Appendix F to Part 1712—Loan Note

Level Debt Service

All of the Terms of this Note shall be in accordance with the applicable provisions of either 7 CFR parts 1712 and 1719 for electric loans, or 7 CFR parts 1739 and 1746 for telephone loans.

MORTGAGE NOTE

________ 19____

1. *Amounts.*

____

(hereinafter called the "Corporation"), a corporation organized and existing under the laws of the State of ____________, for value received, promises to pay to the order of

____

____

____

(hereinafter called the "Lender"), at

____________________,

____

at the times and in the manner hereinafter provided, the sum of ____________ dollars ($), with interest on the amount thereof advanced by the Lender, pursuant to a certain loan contract, dated as of ________

19____, between the Lender and the Corporation (said loan contract being hereinafter called the "Loan Contract") at the rate per annum specified in section 2.

2. *Interest Rate on Principal Advanced.*

The interest rate specified in this section shall be in accordance with 7 CFR 1712.56 or 1739.56 and is subject to approval by the Rural Electrification Administration.

3. *Payment on Advances made within a Principal Deferment Period.*

Interest on principal advanced pursuant to the Loan Contract and remaining unpaid shall be payable on the last day of each ________ [1] of each year for a period ending on ________ [2], 19____. Thereafter, to and including a date ________ [3] (   ) years after the date hereof, the Corporation shall make a payment on each of said ________ [4] dates in each year at the rate of $________ per $1,000 of the principal amount hereof advanced pursuant to the Loan Contract and unpaid as of ________ [2], 19____.

4. *Payment on Advances made after a Principal Deferment Period.*

Interest and principal payments on principal advanced after ________ [2], 19____ shall be made ________ [4] beginning with the last day of the ________ [1] following the month of each advance of principal. Each payment on an advance shall be of an amount including interest and principal equal to every other payment on that advance over a period between the date of the first payment on that advance and a date ________ [3] (   ) years after the date of this Note. These payments shall be in addition to the payment made pursuant to Section 3.

5. *Termination of Advances.*

Except as otherwise approved by REA, the Lender's obligation to advance funds under this Note shall terminate ________ [5] (   ) years after the date hereof.

6. *Application of Payments.*

Each payment made on this Note shall be applied first to the payment of interest on principal and then on account of principal. ________ [3] (   ) years after the date hereof, the principal hereof advanced remaining unpaid, if any, and interest thereon, shall become due and payable.

7. *Prepayments.*

The loan evidenced by this Note may be prepaid in full or in part, subject to the following conditions:

Any prepayment must be on both the guaranteed and unguaranteed portions of the loan, in proportion to the outstanding principal balances of each portion.

8. *Security.*

This Note has been executed and delivered pursuant to and is secured by a certain mortgage, dated as of ________, 19____ made by and among the

____

____

____

as the same may have been amended or supplemented by any supplemental mortgage or supplemental mortgages (said mortgage and any such supplemental mortgage or supplemental mortgages being hereinafter collectively called the "Mortgage"), and is one of several notes (hereinafter called the "notes") permitted to be executed and delivered by the Corporation pursuant to the Mortgage. The Mortgage provides that all notes shall be equally and ratably secured thereby and reference is hereby made to the Mortgage for a description of the property mortgaged and pledged, the nature and extent of the security and the rights of the holder of notes with respect thereto.

9. *Default.*

In case of default by the Corporation, as provided in the Mortgage, all principal advanced and remaining unpaid on this Note and any other notes at the time outstanding, and all interest thereon, may be declared or may become due and payable in the manner and with the effect provided in the Mortgage.

10. *Noteholder.*

This Note evidences indebtedness created by a loan made under the Loan Contract. If the Lender shall at any time assign all or part of the guaranteed portion of this loan, the Corporation shall continue to make payments hereunder to the Lender as collection agent for the holder, and for purposes of the Mortgage the Lender shall continue as, and shall have the rights of, the noteholder.

11. *Amendment of Note.*

This Note may be amended, subject to approval by the Rural Electrification Administration, but new Loan Notes may not be issued.

IN WITNESS WHEREOF the Corporation has caused this Note to be signed in its corporate name and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized, all as of the day and year first written above.

by

President

(SEAL)

Attest:

Secretary

[1] Insert billing period, eg. month, quarter.

[2] Insert ending date of principal deferral period. For electric loans, this period shall be no longer than 2 years for distribution and subtransmission facilities. For bulk transmission and generating facilities, the principal deferral period shall be approved by REA but in no case shall the amortization of principal begin later than the date these facilities are placed into service. For telephone loans this period shall be no longer than 2 years.

[3] Insert number of years between date of note and the date the note is due.

[4] Insert billing period, eg. monthly, quarterly.

[5] Insert, for electric loans, 4 years for distribution and subtransmission facilities or 7 years for bulk transmission and generating facilities. For telephone loans this period will be determined by agreement of the lender and borrower.

2. Part 1719 is added to read as follows:

PART 1719—POST-LOAN POLICIES AND PROCEDURES FOR GUARANTEED ELECTRIC LOANS

Subpart A—General

Subpart B—Section 314 Loan Guarantees—Private Sector

Authority: 7 U.S.C. 901 et seq.; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—General

§ 1719.1 General.

(a) This part establishes specific post-loan policies, procedures and requirements that apply to guaranteed loans. Pre-loan policies, procedures and requirements for these loans are in 7 CFR part 1712.

(b) Additional post-loan policies, procedures and requirements that apply to both guaranteed and insured loans are set forth in 7 CFR part 1717. Borrowers must also comply with all other applicable REA regulations.

(c) This part supersedes those portions of the following REA bulletins and supplements thereto that are in conflict:

(1) Bulletin 20–6, Loans for Generation and Transmission; and

(2) Bulletin 20–22, Guarantee of Loans for Bulk Power Supply Facilities.

§ 1719.2 Definitions.

The definitions in 7 CFR part 1712, subpart A are applicable to this part.

§§ 1719.3–1719.49 [Reserved]

Subpart B—Section 314 Loan Guarantees—Private Sector

§ 1719.50 Legal authority.

Pursuant to Section 314 of the RE Act REA may provide financial assistance to borrowers for the purposes set forth in Section 4 of the RE Act by providing 90 percent guarantees of loans made by any legally organized lending agency as defined in § 1712.52. REA may not provide a guarantee under this subpart for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States.

§ 1719.51 Purpose.

This subpart sets forth post-loan policies and procedures relating to an executed Lender's Agreement between REA and a private lender for a loan

guaranteed under Section 314 of the RE Act.

§ 1719.52 Loan servicing.

(a) The lender shall be responsible for the following:

(1) Servicing the entire loan in accordance with the Lender's Agreement, notwithstanding the fact that another party may hold all or part of the guaranteed portion of the loan.

(2) Ensuring that all obligations of the borrower to the lender under the lender's loan agreement, Loan Note, and the security instrument have been fulfilled.

(3) Ensuring that it has obtained REA approval to advance funds prior to each advance of funds. Such approvals will relate to REA's interests and responsibilities and will not be intended in any way to represent or protect the interests of the lender.

(4) Billing and collecting loan payments from the borrower.

(5) Notifying the REA Area Operations Branch promptly, in writing, when any default in the payment of principal or interest due on a loan has been in effect for five calendar days or more. (See 7 CFR 1700.1 for a listing of states served by each Area Operations Branch.) In the case of such monetary defaults, the lender shall contact the borrower to determine the nature of the problem, and subsequently submit the following to the REA Area Operations Branch:

(i) A report, submitted promptly, setting forth the lender's views as to the reasons for the default, how long the borrower is expected to be in default, and the corrective actions being taken by the borrower to achieve a current debt service position; and

(ii) A proposal, submitted promptly for REA's approval, outlining actions to be taken by the lender and the borrower to cure the default if the default has been in effect for 30 calendar days or more. Such proposal must be delivered to REA within 35 calendar days of the date of the default.

(6) Notifying the REA Area Operations Branch promptly, in writing, if the borrower:

(i) Has failed to pay any local, state or federal taxes owed; or

(ii) Does not have adequate property and liability insurance based on prudent business practice

(7) Reviewing the borrower's annual audited financial statement and providing a summary evaluation to the REA Area Operations Branch within 60 days of receipt of the document.

(8) Notifying the REA Area Operations Branch promptly if the borrower has not provided the required annual audited financial statement.

(9) Notifying the REA Area Operations Branch promptly of a prepayment of all or a portion of the Loan Note by the borrower.

(10) Providing written quarterly loan statement reports to the Director, Financial Operations Division, REA, within 10 working days of the end of the quarter. The reports shall include the amount of funds advanced for each Loan Note during the quarter, the date of each advance, applicable variable or fixed interest rates for the current quarter, record of variable interest rates for the past quarter, outstanding principal at the beginning and end of the quarter, accrued interest, the amount of principal and interest paid during the quarter, and other information that REA may require.

(11) Assuring that the funds are used for the purposes approved in the loan, except that the lender may rely on REA for said assurance if REA has agreed in advance in writing.

(b) In the event of a monetary default, if REA does not agree with the proposal submitted by the lender to cure the default, REA will work with the lender in an effort to develop a mutually satisfactory plan. The plan, including any initiative to accelerate the Loan Note, is subject to the written approval of REA.

(c) Upon notice to the lender, REA may assume loan servicing responsibilities for the entire loan or the guaranteed portion, or require the lender to assign such responsibilities to a different entity, if the lender fails to perform its loan servicing responsibilities under the Lender's Agreement, or if the lender becomes insolvent, makes an admission in writing of its inability to pay its debts generally as they become due, or becomes the subject of proceedings commenced under the Bankruptcy Reform Act of 1978 (11 U.S.C. 101 et seq.) or any similar applicable Federal or state law, or is no longer in good standing with its licensing authority, or ceases to meet the eligibility requirements of 7 CFR 1712.52. Such negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed, and includes not only a failure to act but also not acting in a timely manner.

(d) If loan servicing is assumed by REA or reassigned to another entity, the lender shall cease collecting loan servicing fees for that portion of the loan for which servicing has been assumed or reassigned, and loan servicing fees shall be paid to REA or such other entity.

(e) If REA determines that a lender is negligent in its required loan servicing responsibilities under the Lender's Agreement, such negligent servicing will cause the guarantee to be unenforceable by the lender to the extent such negligent servicing is determined to have caused a loss. If all or part of the guaranteed portion of the loan has been assigned to a holder, such negligent servicing shall not affect the holder's rights under the Assignment Guarantee Agreement, except that REA's guarantee does not extend to guaranteeing that a lender will remit to a holder the holder's legitimate share of any payments made by the borrower.

(f) The lender shall reimburse REA for any payments made to a holder under the guarantee on account of negligent servicing.

§ 1719.53 Secondary transactions.

(a) As set forth in 7 CFR 1712.62, lenders are authorized to assign to a holder up to 100 percent of the guaranteed portion of a loan, provided the loan is not in payment default.

(b) The initial assignment by a lender requires prior written approval from REA. Subsequent assignments by holders do not require REA approval.

(c) An assignment shall entitle the holder to all of the lender's rights under the Loan Note Guarantee to the extent of the guaranteed loan purchased. However, the lender shall remain responsible for servicing the entire loan and shall continue to be bound by all obligations under the Loan Note Guarantee and the Lender's Agreement.

(d) The borrower, its principal officers, members of the borrower's board of directors, and members of the immediate families of said officials shall not be a holder of the borrower's loan.

(e) An Assignment Guarantee Agreement, prepared by the lender using appendix B to 7 CFR 1712 as a guide to the extent practicable, will be executed between REA, the lender and the holder evidencing the amount of the guaranteed portion of the loan assigned. The lender shall send the original of the Assignment Guarantee Agreement to the holder and a conformed copy to REA.

(f) The holder, and any subsequent holder, with prior written approval of the lender, may reassign its unpaid guaranteed portion of the loan. The lender shall maintain adequate records to enable verification, at any time, as to the legal holder of the assigned portion of the loan.

(g) The assigned portion of a loan may be held by only one holder at a time.

This, however, does not prohibit two or more entities from consolidating into a single entity as holder.

(h) As set forth in 7 CFR 1712.53, holders are prohibited from obtaining any part of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under Chapter I of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(12) et seq.).

§ 1719.54 Borrower prepayments.

(a) Loans under this subpart may be prepaid in full or in part in accordance with the terms of the Loan Note or loan agreement. Any prepayment must be on both the guaranteed and unguaranteed portions of the loan, in proportion to the outstanding principal balances of said portions. Depending on the terms of the loan, there may be a premium associated with such prepayment.

(b) Prepayment of a guaranteed loan under this subpart shall be accompanied by a simultaneous prepayment of any other loan made concurrently or contemporaneously with such loan, including any REA insured or guaranteed loan and any supplemental loan required by REA regulations, if the originator of said supplemental loan requests prepayment. Generally, such prepayment shall be on a pro rata basis according to the outstanding principal balances of said loans and in accordance with the specific terms of the joint mortgage or other security instrument that provides common security for such loans.

§ 1719.55 Refinancing.

With REA approval, loans under this subpart may be refinanced under the Loan Note Guarantee if, in REA's sole judgment, such refinancing will not increase REA's loan guarantee risk or otherwise adversely affect the government's interests.

§ 1719.56 Payments under lender's agreement.

(a) In the case of both monetary and non-monetary events of default, REA will work with the borrower and the lender in an effort to eliminate the borrower's default as soon as possible.

(b) Non-monetary defaults will not trigger any payments by REA.

(c) REA's guarantee is limited to paying the amount by which payments made by the borrower, any amounts received from set-offs, and any proceeds received from liquidation are less than the principal and scheduled interest owed on the guaranteed portion of the loan. REA's guarantee does not cover penalty interest or a lender's collection costs, although certain reasonable liquidation costs approved by REA may be deducted from the gross proceeds from the liquidation of collateral, as provided in the Lender's Agreement.

(d) In the event of a monetary default by the borrower:

(1) Any payments made by the borrower on any loan or other obligations of the borrower held by the lender shall be applied pro rata to said obligations secured under the mortgage based on the outstanding principal balances thereof; and

(2) Any payments made by the borrower on the guaranteed loan, any amounts received from set-offs, and any proceeds received from liquidation shall be applied first to reimburse REA for any payments made under the guarantee. Any amounts remaining after said application shall be applied first to the guaranteed portion of the loan, up to the full amount owed on said portion, and second to the unguaranteed portion of the loan.

(e) If a holder has been assigned all or any part of the guaranteed portion of the loan, payment to the holder will proceed as follows:

(1) After a monetary event of default has been in effect for 60 calendar days from the payment due date, the holder may request in writing that the lender repurchase the assigned portion of the loan. Within 30 calendar days of receipt of such demand, the lender shall either repurchase the assigned portion of the loan or inform the holder and REA in writing that it does not intend to repurchase said portion.

(2) REA encourages lenders to repurchase the assigned portion of a loan in monetary default. Such repurchase will enhance a lender's ability to pursue payment remedies, with REA's approval, including but not limited to principal deferments, changes in interest rates, or reamortization of payments.

(3) If the lender does not repurchase the loan from the holder as provided in paragraph (e)(1) of this section, upon written demand by the holder REA will, in accordance with the Assignment Guarantee Agreement, either:

(i) Pay the outstanding principal balance owed, plus accrued interest, that the borrower has failed to pay with respect to the portion of the guaranteed loan held by the holder; or

(ii) Pay that portion of principal and interest payments owed the holder that the borrower has failed to pay, plus such principal and interest payments owed the holder, as due, that the borrower fails to pay in the future.

(4) REA will make payment under paragraph (e)(3) of this section within 30 calendar days of receiving the written demand of the holder and verification of the identity of the legal holder and the amounts owed.

(5) Payments by REA will be made to the lender, who shall be responsible for paying the holder.

(6) REA's obligation to make payments, as set forth in the Assignment Guarantee Agreement, relates only to the failure of a borrower to make principal and interest payments required under the guaranteed Loan Note. REA's guarantee does not extend to guaranteeing that the lender will remit to the holder principal and interest payments made by the borrower, or by REA under the guarantee. Nor does REA guarantee any premiums that may be associated with secondary transactions.

(f) If the lender holds any part of the guaranteed portion of the loan and a monetary event of default has been in effect for 180 calendar days from the payment due date, and the lender has not been able to work out a satisfactory cure of the default, REA will make payment to the lender under one of the methods set forth below within 30 calendar days of written demand by the lender, provided the lender has taken all reasonable steps in an attempt to cure the default and has met all of its obligations under the Lender's Agreement:

(1) Pay the lender the outstanding principal balance, plus accrued interest, that the borrower has failed to pay with respect to the portion of the guaranteed loan held by the lender; or

(2) Pay the lender that portion of principal and interest payments owed on the guaranteed portion of the loan held by the lender that the borrower has failed to pay, plus such principal and interest payments owed on said guaranteed portion, as due, that the borrower fails to pay in the future.

(g) In considering its payment options, REA will select, on a case by case basis, the option that is in the best interest of the Government.

(h) When REA has made a payment under the Loan Note Guarantee, it will establish in its accounts the amount of the payment as due and payable from the borrower, with interest accruing on all amounts owed, at the rate of interest specified in the Loan Note.

§ 1719.57 Obligations of borrower.

(a) Borrowers must meet the applicable requirements of this subpart, subpart B of 7 CFR part 1712, and all other REA regulations.

(b) A borrower must provide the lender with information that is reasonably required to make and service the loan.

§ 1719.58 Replacement of documents.

REA may issue a replacement Loan Note Guarantee, Lender's Agreement or Assignment Guarantee Agreement that has been lost, stolen, destroyed, mutilated or defaced upon receipt of documentation, satisfactory to REA, evidencing the loss of the original document. The lender shall coordinate the replacement of the document and submit the following documentation to REA:

(a) A certificate of loss properly notarized which shall include:

(1) The legal name and address of lender and the capacity of the person certifying.

(2) The legal name and present address of the owner who is requesting the replacement document.

(3) Identification of the document, including the name of the borrower, face amount of Loan Note, date of the Loan Note, present balance of the loan, and percentage of guarantee. If an assignment is involved, identification shall also include the name of the current holder and any previous holders and the percentage of the guaranteed portion of the loan assigned. If the current holder is not the same as the original holder, a copy of the endorsement of each previous holder in the chain of transfer shall be included.

(4) A full statement of the circumstances of the loss, theft or destruction of the document.

(b) An indemnity bond acceptable to REA shall accompany the request for replacement of the document. The bond shall be with surety except when the outstanding principal balance and accrued interest due the holder is less than $1,000,000. Such outstanding balance shall be certified by the lender in writing. All indemnity bonds shall be issued or payable to the United States of America acting through the REA. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save REA harmless against any claim or demand that might arise or against any damage, loss, costs or expenses that might be sustained or incurred by reasons of the loss or replacement of the instruments.

§§ 1719.59–1719.99 [Reserved]

3. Part 1739 is added to read as follows:

PART 1739—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS

Subpart A—General

Subpart B—Section 314 Loan Guarantees—Private Sector

Authority: 7 U.S.C. 901, et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1739.1 General.

(a) This part establishes specific pre-loan policies, procedures and requirements that apply to guaranteed loans which finance the construction and improvement of telephone facilities in rural areas, and other facilities and purposes as set forth in 7 CFR 1735.17.

(b) Additional general and pre-loan policies and procedures that apply to both guaranteed loans and insured loans are set forth in 7 CFR parts 1735 and 1737. Borrowers must also comply with all other applicable REA regulations.

(c) This part supersedes those portions of REA Bulletin 320–22, Guarantee of Loans for Telephone Facilities, and supplements thereto that are in conflict.

§ 1739.2 Definitions.

The definitions in 7 CFR parts 1735, 1737 and 1744 are applicable to this part. Other terms used in this part shall have the following meaning:

Amended and Restated Loan Commitment Agreement means the agreement between REA and the Federal Financing Bank (FFB) that sets forth certain terms and conditions for loans made by the FFB and guaranteed by REA, and well as the responsibilities and obligations of the two parties.

Assignment Guarantee Agreement means the agreement executed between REA, the private lender and the holder that sets forth the terms and conditions of an assignment of all or any part of the guaranteed portion of a loan.

Conditional Commitment to Guarantee means the executed document that sets forth REA's conditional commitment to guarantee a private lender's loan subject to the acknowledgment and acceptance by the borrower and lender of certain conditions and requirements. A similar document may be used for guaranteed loans made by the FFB.

Holder means the entity that owns all or part of the guaranteed portion of a loan. A lender may be a holder, but in most contexts holder refers to an entity other than the lender.

Lender means the organization making and servicing the guaranteed loan under the provisions of an executed Lender's Agreement. Lender is also referred to as a private lender.

Lender certification statement means the statement executed by a private lender certifying to REA that the Lender's Agreement, the Loan Note, any loan agreement between the lender and borrower, any Assignment Guarantee Agreement, and any other documents to be executed among the respective parties are the same in form and substance, except as clearly specified by the lender, as such unexecuted documents previously approved by REA.

Lender's Agreement means the written contract between the private lender and REA setting forth primarily the lender's rights and obligations with respect to the guaranteed loan and the manner in which REA will make payments to the lender under the Loan Note Guarantee.

Loan Note means an evidence of debt. Should REA guarantee a bond issue, "note" shall also be construed to include "bond" or other evidence of indebtedness.

Loan Note Guarantee means the contract of guarantee issued by REA that sets forth the terms and conditions

of REA's guarantee of a private lender's loan.

Monetary default, which is also referred to as a payment default, means the failure of a borrower to make a loan payment when due as prescribed in the Loan Note.

Notice of Lender Selection means the document that sets forth the private lender's qualifications and the private lender's proposal to make a loan to a borrower.

Private lender means a lender eligible under § 1739.52.

§ 1739.3 Initial contact.

Telephone systems interested in applying for a loan guarantee that have not previously received financial assistance from REA should write to the Rural Electrification Administration, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250-1500. A field or headquarters staff representative may be assigned by REA to visit the applicant and discuss its financial needs and eligibility. Existing borrowers should initiate contact directly with their assigned field representative. Borrowers may consult with REA field representatives and headquarters staff, as necessary.

§§ 1739.4-1739.49 [Reserved]

Subpart B—Section 314 Loan Guarantees—Private Sector

§ 1739.50 Legal authority.

Pursuant to section 314 of the RE Act, REA may provide financial assistance to borrowers for the purposes set forth in section 201 of the RE Act by providing 90 percent guarantees of loans made by any legally organized lending agency as defined in 7 CFR 1739.52. REA may not provide a guarantee under this subpart for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States.

§ 1739.51 Eligible loan purposes.

REA may provide 90 percent loan guarantees for the loan purposes set forth in 7 CFR 1735.17.

§ 1739.52 Eligible lenders.

(a) To be eligible for a loan guarantee under this subpart, a lender must be a legally organized lending agency. The following classes of lenders are eligible, provided they meet all the requirements of this section:

(1) Any Federal or state chartered bank or savings and loan association;

(2) Any Farm Credit System institutions with direct lending authority;

(3) Building and loan associations;

(4) The Rural Telephone Finance Cooperative;

(5) A mortgage company that is part of a bank holding company;

(6) An agricultural credit corporation that is a subsidiary of a Federal or state chartered bank;

(7) An insurance company regulated by the National Association of Insurance Commissioners; and

(8) Other lenders that meet the requirements of this section.

(b) Lenders shall be subject to credit examination and supervision by a Federal or state agency unless REA determines that alternative examination and supervisory mechanisms are adequate.

(c) Lenders shall demonstrate to REA the capability to adequately service guaranteed loans. They also shall be in good standing with their licensing authority and meet the loan-making, the loan-servicing, and other requirements of the state in which the lender makes loans guaranteed under this subpart.

(d) The lender selected by the borrower shall provide evidence satisfactory to REA of its qualification under this section, along with the name of the authority that supervises such lender.

(e) REA may require that a lender provide information on its financial strength and capitalization.

§ 1739.53 Exclusion of tax-exempt financing.

(a) A loan, including any other type of debt issuance, is not eligible for an REA guarantee if the income from the loan or the income from obligations issued by the holder of the loan, when the obligations are created by the loan, is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(12) et seq.)

(b) The lender shall certify to REA, and each subsequent holder of the loan shall certify to the seller, that it is in compliance with this section.

(c) A loan guarantee issued by REA shall be null and void with respect to the current holder of the loan if said holder is in violation of this section.

§ 1739.54 Loan guarantee limit.

(a) REA will guarantee repayment of 90 percent of the outstanding loan principal and 90 percent of the interest due on the outstanding loan principal, as further defined in 7 CFR 1746.56. A lesser proportion may be guaranteed if requested by the lender.

(b) REA's guarantee is limited to the loan repayment obligation of the borrower and does not extend to guaranteeing that a lender will remit to a holder loan payments made by the borrower.

§ 1739.55 Loan security.

(a) REA will allow the full pro rata sharing of its mortgage security on all of a borrower's facilities and property with a private lender on both the guaranteed and unguaranteed portions of the loan (see 7 CFR 1746.56 for the application of payments between the guaranteed and unguaranteed portions of the loan.) REA's accommodation of its lien will provide for the following:

(1) An equal pro rata mortgage lien with all other lenders on the mortgage in the event of liquidation;

(2) Limited controls over the borrower's operations; and

(3) The ability to pursue remedies for financial defaults, as set forth in the mortgage, subject to REA's prior written approval.

(b) If REA has repurchased the guaranteed portion of the loan, the lender's lien will then apply only to the unguaranteed portion of the loan, and REA shall have the lien for the guaranteed portion of the loan.

(c) The lender may not obtain greater security for the unguaranteed portion of the loan than for the guaranteed portion, and if the lender exercises any rights to set-off in order to collect any portion of the loan, any payments so collected shall be applied as provided in 7 CFR 1746.56.

(d) At all times when any note representing any portion of the guaranteed loan is outstanding, the mortgage security shall secure payment of all such notes pro rata. So long as any such note has not been repurchased by REA, the lender and not the holder of such note or any interest therein shall be considered to be, and shall have the rights of, a secured noteholder for purposes of such mortgage security.

(e) The granting of a lien to the lender is subject to any approval rights of other mortgagees secured under the mortgage.

(f) The mortgage, which is subject to REA approval, shall be prepared by the lender, unless REA decides otherwise.

§ 1739.56 Interest rates.

(a) Interest rates, which are subject to REA approval, shall be negotiated between the lender and the borrower. They may be either fixed or variable. The interest rate must be the same for the guaranteed and unguaranteed portions of the loan.

(b) The interest rate charged shall be no higher than the rate customarily charged by the lender on other loans of similar maturity, having a similar risk of repayment and similar security. REA will not guarantee a loan if it determines, in its sole discretion, that the proposed interest rate does not meet the standards of this paragraph.

(c) If a variable interest rate is selected, it shall be tied to a published rate, agreed to by the lender and the borrower and approved by REA, that is recognized regionally or nationally and is readily accessible and verifiable. The published rate selected may not be changed unless approved in writing by the lender, the borrower, and REA.

(d) The frequency of change in a variable interest rate for a given advance of funds shall be specified in the Lender's Agreement and in the Loan Note, but shall not be more often than monthly. The variable interest rate for a given advance of funds shall not be raised:

(1) More than 100 basis points in any year; and

(2) Not more than 500 basis points during the life of the loan, which establishes the ceiling interest rate for the loan advance. The borrower shall be given sufficient notice of each adjustment in the interest rate.

(e) A variable interest rate can be changed to a fixed rate, provided the fixed rate does not exceed the ceiling interest rate for the advance. A fixed interest rate can be changed to a variable rate if the variable rate has a ceiling that is not higher than the original fixed rate. Such interest rate changes may be made at any time during the life of the loan in accordance with the Lender's Agreement and as provided in the Loan Note. Written notice to and prior written approval by REA for each change under this paragraph is required. The lender is responsible for the legal documentation of interest changes under this paragraph by an amendment to the Loan Note.

(f) The Loan Note shall provide for adjustment of payment installments coincident with an interest rate change to ensure that the outstanding principal balance is amortized within the prescribed loan maturity and to eliminate the possibility of a balloon payment at the final maturity date of the loan.

(g) The interest rate applicable to each advance of funds shall be established and recorded in accordance with the terms of the Loan Note.

§ 1739.57 Loan maturity.

The maturity of the loan, which may not exceed 35 years, is subject to the requirements of § 1735.43(a) and (b). The maturity date shall be determined by mutual consent of the borrower and the lender.

§ 1739.58 Terms of repayment.

(a) The method and frequency of debt service payments on the loan shall be specified in the Loan Note and are subject to REA approval. Debt service payments shall be scheduled on terms that assure repayment of the loan by the final maturity date, and shall be no less frequent than quarterly.

(b) Interest shall be payable on the unpaid principal balance, from the date of each advance of funds until the principal is repaid.

(c) The guaranteed loan may be repaid in substantially equal periodic installments covering interest and principal, in periodic installments that include interest and level amortization of principal, or other principal repayment schedule satisfactory to REA.

(d) Principal amortization on loan fund advances during the first 2 years following the date of the Loan Note shall begin no later than 2 years from the date of the Loan Note. Principal amortization on advances made 2 years or more after the date of the Loan Note shall begin with the next scheduled loan payment.

(e) REA will not guarantee any loan under this subpart that provides for:

(1) A balloon payment of principal or interest at the final maturity date of the loan; or

(2) The payment of interest on interest.

§ 1739.59 Advance of funds.

(a) The time limit on advance of funds shall be as agreed upon by the borrower and lender.

(b) When requested by the lender, the Administrator may approve the advance of loan funds after the date set forth in paragraph (a) of this section if the borrower has demonstrated to the satisfaction of the Administrator that said advances will be adequately secured under the mortgage.

(c) REA will rescind its loan guarantee with respect to any loan funds not advanced to a borrower as of the final date approved for advancing funds pursuant to this section.

(d) REA reserves the right to restrict advance of funds if the continued feasibility of the loan can not be adequately demonstrated.

§ 1739.60 Fees for guaranteed loans.

(a) No fees or charges will be assessed by REA for its guarantee of a loan under this subpart.

(b) The lender may assess the borrower loan origination fees or other charges, subject to REA approval, provided such fees and charges are no higher than those charged by the lender to its other customers for similar types of transactions.

(c) Any loan servicing fees assessed a holder, other than REA, are not subject to REA review or approval.

(d) Fees and other charges authorized by this section will not be guaranteed by REA and shall not be included as part of the loan.

§ 1739.61 Loan servicing.

The lender shall be responsible for servicing the entire guaranteed loan in accordance with the Lender's Agreement, notwithstanding the fact that another party may hold all or a part of the guaranteed portion of the loan. Loan servicing requirements are set forth in 7 CFR 1746.52.

§ 1739.62 Secondary transactions.

(a) Lenders are permitted to assign to a holder up to 100 percent of the guaranteed portion of a loan, provided the loan is not in payment default. The assignment may be by direct sale of all or part of the guaranteed portion of the loan to the holder, or by other means. The assignment must comply with the provisions of 7 CFR 1746.53, and be evidenced by an Assignment Guarantee Agreement, using appendix B of this part as a guide to the extent practicable. The unguaranteed portion of a loan shall not be assigned except for security purposes.

(b) The Loan Note Guarantee and the Assignment Guarantee Agreement shall be considered collectively to constitute the "contract of guarantee" as that term is used in Section 306 of the RE Act with respect to assignment of the loan and related loan guarantee.

(c) If REA makes a payment under the Lender's Agreement, REA's liability for such payment is discharged. The lender is responsible for remitting to the holder that portion of the payment due the holder as set forth in 7 CFR 1746.56 and the Lender's Agreement.

§ 1739.63 Conflict of interest.

(a) All eligible lenders shall provide information, satisfactory to REA, in the Notice of Lender Selection as to whether and the extent that:

(1) The borrower, its principal officers, members of the board of directors, or members of the immediate families of said officials hold any stock or other evidence of ownership in the lender's organization; and

(2) The lender or its principal officers hold any stock or other evidence of

ownership in the borrower, other than patronage capital.

(b) If a borrower has knowledge of any information required in paragraph (a) of this section that is not reported on the Notice of Lender Selection form, it shall report such information to the lender and REA.

(c) REA will determine whether such ownership represents an actual or potential conflict of interest.

§ 1739.64 Debarment and suspension.

Lenders are required to comply with certain Federal requirements on debarment and suspension as set forth in 7 CFR part 3017.

§ 1739.65 Borrower's loan guarantee application.

All loan guarantee applications shall be submitted to REA. The applications of all borrowers shall include all of the material required for applications under 7 CFR part 1737, a completed Notice of Lender Selection as set forth in § 1739.66, and a copy of the form of opinion of counsel that will be given in connection with the loan transaction.

§ 1739.66 Notice of lender selection.

(a) Borrowers must submit a Notice of Lender Selection to REA setting forth the lender's qualifications and the lender's loan proposal. The notice must be signed by the lender and the borrower. The Notice of Lender Selection shall be prepared using appendix C of this part as a guide to the extent practicable.

(b) REA encourages borrowers to make a lender selection prior to the submission of an application for a loan guarantee so that the Notice of Lender Selection can be submitted with the borrower's application. The notice shall provide the following information:

(1) The lender's current interest rates and proposed interest rate terms;

(2) The basic terms and conditions of the lender's loan;

(3) Potential conflicts of interest between the borrower and lender;

(4) Credit reports on the borrower, if available, obtained from national or regional credit bureaus or similar organizations, and the lender's assessment of said reports;

(5) Fees and charges to be assessed by the lender;

(6) A description of the lender's loan servicing plans;

(7) The lender's financial analysis and evaluation of the borrower and the proposed loan;

(8) Any plans by the lender to market, by means of an assignment of the guarantee, all or part of the guaranteed portion of the loan;

(9) Evidence of the lender's regulation by the appropriate authorities, including a description of its current standing with those authorities and evidence of the lender's fulfillment of licensing and other requirements;

(10) Evidence of the lender's financial strength and capitalization;

(11) A draft of the Loan Note;

(12) A copy of the form of loan agreement to be used, if any; and

(13) The form of lender's opinion of counsel that shall be given in connection with the loan transaction.

(c) If evidence in paragraphs (b)(9) and (b)(10) of this section has been provided to REA within the 12 months preceding REA receipt of the Notice of Lender Selection, such evidence need not be resubmitted if there has been no material change in conditions.

(d) If a borrower has not made a lender selection at the time of submitting an application for a loan guarantee, the borrower shall contact a prospective lender regarding the lender's proposed rate of interest, loan maturity and debt repayment method on similar transactions, and include the lender's written response with the borrower's application for a loan guarantee. Such information shall be used by the borrower in its long range financial forecast included with the application.

(e) REA will determine the lender's qualification based on the information submitted by the lender as required by this subpart. REA will provide written notification of its approval or disapproval of the borrower's choice of lender to the borrower and the lender.

(f) The lender shall notify REA and the borrower promptly of any material changes in the information contained in the Notice of Lender Selection submitted to REA.

(g) Any changes in lender selection must be approved by REA and supported by an amendment to the Notice of Lender Selection form.

(h) REA will not conditionally commit to guarantee a loan until the borrower has selected a lender and submitted to REA a complete Notice of Lender Selection, in form and substance satisfactory to REA.

§ 1739.67 Lender's loan note.

(a) A loan guaranteed by REA shall be represented by a single Loan Note that shall be prepared by the lender and executed by the borrower.

(b) Appendix F of this part shall be used to the extent practicable in preparing the loan note. The Loan Note and any Loan Note amendments are subject to REA written approval.

(c) A completed draft of the note shall be submitted with the Notice of Lender Selection, or as soon thereafter as practicable. REA will notify the borrower and the lender of REA's approval or disapproval of the draft note. If material changes are made in the draft Loan Note after it has been approved by REA, the lender shall clearly identify the changes to REA, with evidence of the borrower's concurrence with the changes, when the final executed Loan Note is submitted to REA for approval.

(d) Each Loan Note guaranteed by REA shall include a Loan Note Guarantee based on Appendix E of this part to the extent practicable.

(e) The Loan Note shall include a date beyond which the lender shall not advance any funds under the note. This date is subject to REA approval and to the provisions of § 1739.59.

(f) Loan notes may be amended, subject to REA approval, but new Loan Notes may not be issued.

§ 1739.68 Lender's loan agreement.

(a) Loans guaranteed by REA may be represented by a loan agreement, in form and substance satisfactory to REA, executed between the lender and the borrower. Such loan agreements may include, for example, provisions of interest rates, loan repayment, advance of funds procedures, approvals required by law, special convenants and conditions, prepayments, and events of default.

(b) A completed draft of the loan agreement shall be submitted with the Notice of Lender Selection, or as soon thereafter as practicable. REA will notify the borrower and the lender of REA's approval or disapproval of the draft contract. If material changes are made in the draft contract after it has been approved by REA, the lender shall clearly identify the changes to REA, with evidence of the borrower's concurrence with the changes, when the final executed loan agreement is submitted to REA for approval.

§ 1739.69 Lender's agreement.

(a) The Lender's Agreement is the executed agreement between REA and the lender setting forth primarily the lender's rights and obligations with respect to the guaranteed loan and the manner in which REA will make payments to the lender under the Loan Note Guarantee. The Lender's Agreement in Appendix A of this part should be used as a guide to the extent practicable.

(b) Subsequent to REA's approval of a borrower's choice of private lender, the

lender shall prepare a draft of the Lender's Agreement for REA's review and approval. Evidence of REA's approval of this draft agreement will be provided in writing to the lender, with a copy to the borrower.

(c) If material changes are made in the draft Lender's Agreement after it has been approved by REA, the lender shall clearly identify the changes to REA before the final agreement is submitted to REA for approval.

(d) Lenders will be required to follow existing REA policies and procedures, as well as future policies and procedures, provided such future policies and procedures are not inconsistent with the express provisions of the Lender's Agreement executed by the lender and REA.

(e) Other provisions of the Lender's Agreement are set forth in 7 CFR part 1746, subpart B.

§ 1739.70 Conditional commitment to guarantee.

(a) REA will commit to guarantee a loan, subject to conditions to be met by the borrower or lender, when the administrative findings applicable to the loan are signed per 7 CFR part 1737.

(b) REA's Conditional Commitment to Guarantee, using appendix D of this part as a guide to the extent practicable, will be provided to the lender, with a copy to the borrower. Such commitment will include the following:

(1) The interest rate provisions of the loan, the loan amount and purposes, and the conditions precedent to the execution of a Loan Note Guarantee by REA and the advance of guaranteed funds by the lender.

(2) A request that the lender and borrower each sign the "Acceptance of Conditions" section of the Conditional Commitment to Guarantee and return it to REA by the date specified indicating their acceptance of the stated terms and conditions and requesting the issuance of a Loan Note Guarantee by REA.

(3) A request that the lender begin preparing in final form the Lender's Agreement and Loan Note, along with the loan agreement and Assignment Guarantee Agreement, as applicable.

(c) The Conditional Commitment to Guarantee shall be valid for a period not to exceed one year from the date of execution unless extended in writing by REA before the expiration date.

(d) If REA determines it is unable to guarantee a loan, REA will notify the borrower and lender in writing. Such notification will include the reasons for denial of the guarantee.

§ 1739.71 Changes in conditions.

(a) *Changes in loan terms and conditions.* Changes in contractual conditions regarding interest rate provisions or other terms and conditions, after execution of the Conditional Commitment to Guarantee, may be made for good cause if acceptable to both the lender and the borrower, and prior written approval is obtained from REA.

(b) *Change of Lender.* (1) With REA's prior written approval, a new lender may be substituted prior to execution of the Loan Note Guarantee. Subsequent to such execution, a new lender will not be approved unless the original lender has discontinued lending operations, or is unable to make the loan or satisfactorily fulfill its obligations under the Lender's Agreement. New lenders must meet the requirements of this subpart.

(2) The borrower shall provide in writing to REA, with a copy to the new lender, the reasons for the substitution and any proposed changes in the conditions of the loan.

(c) *Criteria for approval.* In deciding whether or not to approved changes authorized by this section, REA will consider whether the changes will increase REA's guarantee risk or otherwise adversely affect the government's interests, and whether the changes are essential to enable the borrower to obtain a loan from an eligible lender.

§ 1739.72 Documents summary.

For the convenience of the reader, this section summarizes the main documents set forth in this subpart:

(a) *Borrower's Loan Guarantee Application* (see 7 CFR part 1737 and § 1739.65). The application is submitted by the borrower to REA and contains all of the documents and other information required for REA to approve a loan guarantee. Information provided REA in connection with an insured or Rural Telephone Bank loan is not required to be resubmitted.

(b) *Notice of Lender Selection (§ 1739.66).* This document, signed by the lender and the borrower, sets forth the lender's qualifications and the basic terms and conditions of the lender's proposed loan. The notice is submitted to REA by the borrower, preferably at the same time as the loan guarantee application.

(c) *Conditional Commitment to Guarantee (§ 1739.70).* REA issues this commitment to the lender when REA determines that a loan guarantee can be approved if certain conditions are met by the borrower and/or lender.

(d) *Lender Certification (§ 1739.73).* The lender submits this document to REA before the Lender's Agreement, Loan Note, Assignment Guarantee Agreement, and loan agreement are executed in final form to certify that these documents are the same in form and substance as the most recent draft of the documents approved by REA.

(e) *Loan Note (§ 1739.67).* This is the promissory note issued by the borrower to the lender, which sets forth the obligation of the borrower to repay the loan with interest. A draft of the Loan Note is submitted by the borrower to REA for approval at the same time as the Notice of Lender Selection, or as soon thereafter as practicable.

(f) *Loan Agreement (§ 1739.68).* In addition to the Loan Note, the borrower and the lender may execute a loan agreement to set forth certain provisions of the loan, such as those relating to interest rates, loan repayment, advance of funds procedures, etc. Procedures for REA approval of a loan agreement are the same as for the Loan Note.

(g) *Loan Note Guarantee (§ 1739.67).* This is the contract of guarantee, prepared by the lender, which states the terms and conditions of REA's guarantee of the lender's loan.

(h) *Lender's Agreement (§ 1739.69).* This contract between REA and the lender sets forth primarily the lender's rights and obligations with respect to the guaranteed loan and the manner in which REA will make payments to the lender under the Loan Note Guarantee. After REA has approved the borrower's choice of lender, the Lender's Agreement is prepared by the lender and submitted to REA for approval.

(i) *Assignment Guarantee Agreement (§ 1739.62).* This agreement is required if the lender intends to assign all or part of the guaranteed portion of the loan. It is prepared by the lender and is executed by the lender, the holder, and REA.

§ 1739.73 Execution of final documents.

(a) The process to execute final loan and security documents will begin after the borrower and lender sign the "Acceptance of Conditions" section of the Conditional Commitment to Guarantee and return it to REA. The process must be completed before expiration of the Conditional Commitment to Guarantee as provided for in § 1739.70. Before a Loan Note Guarantee will be issued, the lender must certify to REA that there has been no material adverse change in the Borrower's financial condition nor any other material adverse changes in the Borrower's condition since the date of submission of the loan guarantee application to REA. If any such change, in the opinion of REA, threatens loan

feasibility or loan security, regardless of when the change occurred or when REA became aware it, REA is under no obligation to issue a Loan Note Guarantee.

(b) All final documents shall be prepared by the lender and submitted to REA for approval. Said documents must either be materially the same in form and substance as the draft documents previously approved by REA, or any material changes must be clearly identified to REA.

(c) Borrowers under the jurisdiction of a state regulatory authority may obtain drafts of the loan and security documents in advance from the lender in order to begin proceedings with the state authority.

(d) The lender will be responsible for:

(1) Arranging for and ensuring the proper execution of the loan and security documents by all parties;

(2) Arranging for and ensuring the proper recording of all security instruments, if applicable; and

(3) Providing to REA all said documents, evidence of proper execution and recording, and opinions of counsel, in form and substance satisfactory to the Administrator, regarding the loan transaction for both the lender and borrower.

(e) When REA has determined that all of the required loan and security documents and associated evidence of execution and recording are satisfactory, REA will execute the Lender's Agreement, the Loan Note Guarantee, and if applicable, the Assignment Guarantee Agreement.

(f) The original of the executed Loan Note Guarantee, Loan Note, Lender's Agreement, and any loan agreement will be provided to the lender. The original of the executed Assignment Guarantee Agreement, if applicable, will be provided to the lender for transmittal to the holder.

(g) If REA determines that it cannot execute the Loan Note Guarantee or other related documents because all requirements have not been met, REA will inform the lender and borrower of the reasons and establish a reasonable period for the lender and the borrower to resolve the problems, if possible.

§ 1739.74 Access to records of lender.

Upon request, the lender shall permit representatives of REA and other agencies of the Federal government to inspect and make copies of any of the records of the lender pertaining to REA guaranteed loans. Such inspection and copying may be made during the lender's regular office hours, or any other time the lender and the government find convenient.

§ 1739.75 Loan documentation.

The document examples set forth in appendices A through F of this part shall be used as a guide to the extent practicable for loans guaranteed under this subpart.

§§ 1739.76–1739.99 [Reserved]

Appendix A to Part 1739—Lender's Agreements

Type of Loan: ______
REA Loan No. ______
Applicable: 7 CFR Parts 1712, 1719, 1739 & 1746

______

(Lender) of ______
has made a loan to ______
(Borrower) in the principal amount of
$______ as evidenced by a note (include Bond as appropriate) described as follows:

______

The United States of America, acting through the Rural Electrification Administration (REA) has entered into a Loan Note Guarantee or has issued a Conditional Commitment to Guarantee to enter into a Loan Note Guarantee with the Lender applicable to such loan to guarantee repayment of 90 percent of the outstanding principal advanced and interest owed thereon. The terms of the Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan, and to facilitate the marketability of the guaranteed portion of the loan, the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed 90 percent of the principal advanced and accrued interest on the above indebtedness.

II. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender had actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which REA acquires knowledge of the foregoing. Negligent servicing is defined as the failure to perform those services which a reasonable prudent Lender would perform in servicing its portfolio of loans that are not guaranteed. The term includes not only a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III. *Lender's Assignment of Guaranteed Portion of Loan.*

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portions of the loan to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the items of the notes.

B. The Lender may assign all or a part of the guaranteed portion of the loan to not more than one Holder. The assignment is subject to REA approval, and an "Assignment Guarantee Agreement" must be used. The Holder, and any subsequent Holder, upon written notice to Lender and REA, may reassign to not more than one assignee all, but not part, of its unpaid guaranteed portion of the loan. Upon such notification the assignee shall succeed to all rights and obligations of the Holder thereunder.

C. When a guaranteed portion of a loan is assigned to a Holder, the Holder shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased, but not including those rights conveyed solely by the security instrument. Lender will remain bound to all the obligations under the Loan Note Guarantee and this agreement and the applicable REA program regulations found in 7 CFR Parts 1712, 1719, 1739 and 1746 and to future REA program regulations not inconsistent with the express provisions hereof.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of 7 CFR 1712 or 1739 and in accordance with the terms of the Conditional Commitment to Guarantee.

V. Lender agrees to obtain REA approval to advance loan funds prior to each advance of funds.

VI. The Lender certifies that it has disclosed in writing to REA all information concerning actual or potential conflicts of interest as required by 7 CFR part 1712 or 1739.

VII. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VIII. The Lender certifies that a Loan Note concurred in by REA has been or will be signed with the Borrower.

IX. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of the loan may be made prior to full disbursement of loan funds, only with the

prior written approval of REA. Subsequent to full disbursement, the guaranteed portion of the loan may be disposed of as provided herein.

C. It is the Lender's responsibility to see that the borrower has obtained any required approvals of the loan from a state regulatory authority.

D. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, security instruments, and any loan agreement or supplemental agreements and notifying REA and the Borrower in writing of any violations. None of the aforesaid instruments will be altered without REA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder its pro rata share thereof determined according to its interest in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or written down only with agreement of the Lender and Holder and only with REA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party and Fidelity Bond coverage if required.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with section 2 of the Loan Note Guarantee, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of REA; proceeds from the sale or other disposition of collateral are applied in accordance with section 2 of the Loan Note Guarantee, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures may, with prior written approval of REA, be used to acquire property of similar nature; and the Borrower complies with all laws and ordinances applicable to the loan and the collateral.

6. Assuring that if corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to REA at such time and frequency as required by the Conditional Commitment to Guarantee or any loan agreement. In the case of guarantees secured by collateral, assuring that the priority and validity of the lien is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by REA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by REA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower or any party liable is not released from liability for all or any part of the loan except in accordance with REA regulations.

10. Providing the Director, Fiscal Accounting Division, REA with a loan status report within 10 working days of the end of each quarter (March 31, June 30, September 30, and December 31).

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions, and reporting such actions to the REA Area Operations Branch responsible for the loan.

12. Notifying the REA Area Operations Branch promptly of a prepayment of all or a portion of the Loan Note by the borrower.

13. Assuring that the funds are used for the purposes approved in the loan, except that the lender may rely on REA for said assurance if REA has agreed in advance in writing.

E. The lender shall reimburse REA for any payments made to a holder under the guarantee on account of negligent servicing.

X. *Default.*

A. The Lender shall notify the REA Area Operations Branch promptly, in writing, when any default in the payment of principal or interest due on a loan has been in effect for five calendar days or more. In the case of such monetary defaults, the lender shall contact the borrower to determine the nature of the problem, and subsequently submit the following to the REA Area Operations Branch:

1. A report, submitted promptly, setting forth the lender's views as to the reasons for the default, how long the borrower is expected to be in default, and the corrective actions being taken by the borrower to achieve a current debt service position, and

2. A proposal, submitted promptly for REA's approval, outlining actions to be taken by the lender and the borrower to cure that default if the default has been in effect for 30 calendar days or more. Such proposal must be delivered to REA within 35 calendar days of the date of the default.

B. The lender shall take all reasonable steps to cure the default as soon as practicable. Actions taken by the Lender with written concurrence of REA may include but are not limited to the following or any combination thereof:

1. Deferment of principal payments subject to rights of any Holder.

2. An additional unguaranteed temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan, subject to rights of any Holder.

4. Transfer and assumption of the loan in accordance with REA regulations.

5. Reorganization.

6. Liquidation.

7. Changes in interest rate with REA's, Lender's, and the Holder's approval, provided such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

C. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the borrower to cure a default, where reasonable.

D. The Holder has the right to request that the Lender repurchase the unpaid guaranteed portion of the loan when (a) the borrower is in default not less than 60 days on principle and/or interest due on the loan, or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 days of its receipt. If the Lender agrees to repurchase, repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest, less the Lender's servicing fee. Holder will concurrently sent a copy of demand to REA. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default where reasonable. The Lender will promptly notify the Holder and REA of its decision regarding repurchase.

E. If the borrower is in default on its loan payments and the Lender does not repurchase the Holder's portion as provided in paragraph D, within thirty (30) days after written demand to REA from Holder, REA will either (a) pay to Lender any shortfall in principal and interest payments by the borrower on the guaranteed portion held by the Holder, as due, to be remitted by Lender to Holder, or (b) purchase the unpaid principal balance of the guaranteed portion held by the Holder, together with accrued interest to date of repurchase, less Lender's sevicing fee. Under option (b) of this paragraph, the Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. REA's obligation to Holder applies only in the case where the Borrower is in monetary default, and does not apply if the Borrower is not in default and the Lender fails to remit payment to Holder.

The demand to REA shall include a copy of the written demand made upon the Lender. The Holder or its duly authorized agent will also include evidence of its right to require payment from REA. Such evidence will consist of the original of the Assignment Guarantee Agreement properly assigned to REA without recourse including all rights, title and interest in the loan. REA will be subrogated to all rights of Holder. The Holder will include in its demand the amount due, including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. Unless othewise determined by REA, such proposed payment will not be later than 30 days from the date of demand.

REA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide REA with the information necessary for REA determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the

information submitted by the Lender must be resolved before payment will be approved. REA will notifiy both parties, who must resolve the conflict to REA's satisfaction, before payment by REA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the necessary information, REA will review the demand and determine if payment is warranted, and if so, pay the Lender, who shall in turn promptly pay the Holder.

F. If the Lender holds any part of the guaranteed portion of the loan and a monetary event of default has been in effect for 180 days from the payment due date, and the Lender has not been able to work out a satisfactory cure of the default, REA will at its option make payment to the Lender under one of the methods set forth below within 30 days of written demand by the Lender, provided the Lender has met all of its obligations under the Lender's Agreement:

1. REA will pay the outstanding principal balance, plus accrued interest that the Borrower has failed to pay with respect to the portion of the guaranteed loan held by the Lender. In this case, the guarantee will not cover any note interest accruing after 90 days from the date of the demand letter by the Lender to REA.

2. REA will pay that portion of principal and interest payments owed on the guaranteed portion of the loan held by the lender that the borrower has failed to pay, plus such principal and interest payments owed on said guaranteed portion, as due, that the borrower fails to pay in the future.

G. Lender consents to the purchase by REA and agrees to furnish on request by REA a current statement, certified by an appropriate authorized officer of the Lender, of the unpaid principal and interest then owed by the Borrower on the loan and the amount then owed to any Holder. Lender agrees that any purchase by REA does not change, alter or modify any of the Lender's obligations to REA arising from said loan or guarantee, nor does it waive any of REA's rights against Lender, and that REA will have the right to set-off against Lender all rights inuring to REA as the Holder of this instrument against REA's obligation to Lender under the Loan Note Guarantee.

H. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When REA repurchases from a Holder, REA will pay the Holder only the amounts due the Holder. REA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged REA and no such fee is collectible from REA.

I. Lender may also repurchase the guaranteed portion of the loan pursuant to section 12 of the Loan Note Guarantee.

XI. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with REA. If REA concurs that the Lender's conclusion or at any time concludes independently that liquidation is necessary, it wil promptly notify the Lender and the matter will be handled as follows:

A. *Lender's proposed method of Liquidation.* Within 30 days after the decision to liquidate, the Lender will advise REA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide REA with:

1. Such proof as REA requires to establish the Lender's ownership of the guaranteed loan promissory note and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory, accounts receivable, corporate guarantees, and other existing and contingent assets, and advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal loan balance including accrued interest is $200,000 or less, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of $200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and REA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by REA and the Lender.

B. *REA's Response to Lender's Liquidation Plan.* REA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If REA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should REA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between REA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation, however, should REA opt to conduct the liquidation, REA will proceed as follows:

1. The Lender will transfer to REA all rights and interest necessary to allow REA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by REA.

2. REA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to REA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or REA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration documents will be sent to REA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide REA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When REA is the holder of a portion of the guaranteed loan, the Lender will transmit to REA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc., pursuant to the priorities set forth in section 2 of the Loan Note Guarantee. When REA liquidates, the Lender will be provided with similar reports on Request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. REA will have the right to recover losses paid under the guarantee from any party liable.

1. Estimated loss payments may be approved by REA after the Lender's liquidation plan has been approved by REA. Payments will be made in accordance with applicable REA procedures.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to REA an estimate of loss that will occur in connection with liquidation of the loan. If REA agrees to pay an estimated loss settlement, the Lender shall apply such amount due to the outstanding principal balance owed on the guaranteed debt. The appraisal value of the collateral will be used to determine the estimated loss. Once this claim is approved by REA, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable REA procedures.

Within 30 days of REA's approval of the loss estimate, REA will request the issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted by the Lender to REA.

3. After the Lender has completed liquidation, REA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If REA has any questions regarding the amounts set forth in the final report of loss, it will investigate the matter. The Lender will make its records available to and otherwise assist REA in making the investigation. If REA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When REA finds the final report of loss to be proper in all respects, it will be tentatively approved.

4. When the Lender has conducted liquidation and after the final report of loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, REA will request the issuance of a Treasury check in payment of the additional amount owed by REA to the Lender.

b. If the loss is less than the estimated loss payment, the Lender will reimburse REA for the overpayment plus interest at the note rate from date of payment.

5. If REA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. If the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by REA when the final report of loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by REA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If REA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date REA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender, provided it proceeds expeditiously with the liquidation plan approved by REA.

G. *Application of REA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by REA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss the Lender will notify the Borrower that the loss payment has been so applied.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the lender (with REA's written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will obtain REA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by REA within 60 days after the review of the accounting of the collateral.

XII. *Protective Advances.*

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). REA's written authorization is required on all protective advances. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rents, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. *Additional Loans or Advances.*

The Lender will not make additional expenditures or new loans without first obtaining the written approval of REA even though such expenditures or loans will not be guaranteed.

XIV. *Future Recovery.*

After a loan has been liquidated and final loss has been paid by REA, any future funds that may be recovered by the Lender will be pro rated between REA and the Lender. REA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. *Transfer And Assumption Cases.*

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor is released from personal liability, the Lender, if it holds the guaranteed portion, may file a report of estimated loss to recover its pro rata share of the actual loss at that time.

XVI. *Bankruptcy.*

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 9, 11, 12 or 13 of the Bankruptcy Code (11 U.S.C. 101 et seq.), payment of loss claims may be made as proved in this section XVI. For a Chapter 7 bankruptcy or liquidation plan in a Chapter 11 bankruptcy, only paragraph XVI B.3. is applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can be made only after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by REA at its option in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing REA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The estimated loss claim, as well as any revisions to this claim, will be accompanied by necessary legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will report to REA on the status of the borrower and the loan pursuant to REA instructions.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B.1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction that extend beyond the period of the reorganization plan.

3. *Final Loss Payments.*

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, REA will close out the estimated loss account at the time notification of payment in full is received.

4. *Payment Application.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the REA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the Lender will provide REA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by REA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse REA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

XVII. *Other Requirements.*

This agreement is subject to all the applicable provisions of 7 CFR Parts 1712, 1719, 1739 and 1746 and any future amendments of these regulations not inconsistent with this agreement.

XVIII. *Execution of Agreements.*

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon REA with respect to the execution of such guarantee. REA in no way warrants that such a guarantee has been or will be executed.

XIX. *Notices.*

All notices and actions will be initiated through the REA Area Operations Branch.

Dated this ________ day of ________, 19____.

LENDER: UNITED STATES OF AMERICA, Rural Electrification Administration.

ATTEST: (Seal) ________

By ________

Title ________

By ________

Title ________

Appendix B to Part 1739—Assignment Guarantee Agreement

Type of Loan: ________

REA Loan No. ________

Applicable: 7 CFR 1712, 1719, 1739 & 1746

____

of _______________

(Lender) has made a loan to _______________
in the principal amount of $ _______________
as evidenced by a note dated. _______________
The United States of America, acting through the Rural Electrification Administration (REA) entered into a Loan Note Guarantee with the Lender applicable to such loan to guarantee the loan not to exceed ______% of the amount of the principal advanced and any interest due thereon as provided therein.

____

of _______________

(Holder) desires to purchase from Lender ______% of the guaranteed portion of such loan. Copies of Borrower's note and the Loan Note Guarantee are attached hereto as a part hereto.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now outstanding is $______. Lender hereby assigns to Holder ______% of the guaranteed portion of the loan representing $______ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth.

2. Loan servicing. The Lender will be responsible for servicing the entire loan and will remain mortgage and/or secured party of record. The entire loan will be secured by the same security.

The Lender will receive all payments on account of principal of, or interest on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. Servicing Fee. Holder agrees that Lender will retain a servicing fee of ______ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. Purchase by Holder. The portion purchased by the Holder must be from the guaranteed portion of the loan. Subject to the limitations of 7 CFR 1712.55 or 1739.55, the Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the applicable program regulations found in 7 CFR Parts 1712, 1719, 1739 and 1746 now in effect, and future REA program regulations not inconsistent with the provisions of said guarantee.

5. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

6. Exclusion of Tax-Exempt Financing. A loan is not eligible for a guarantee if the income from the loan or the income from obligations issued by the owner of the loan (Lender or Holder), when the obligations are created by the loan, is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986. The Lender shall certify to REA, and each subsequent Holder of the loan shall certify to the seller, that it is in compliance with this section. The loan guarantee and the Assignment Guarantee Agreement shall be null and void with respect to the current owner of a guaranteed portion of the loan if said owner is in violation of this section.

7. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by REA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse REA for any payment made by REA to Holder that REA would not be required to make if such lender had held the guaranteed portion of the loan. The Holder, upon written notice to the Lender and REA, may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to this form to effectuate the transfer.

8. Repurchase by the Lender (Defaults). The holder has the right to request that the Lender repurchase the unpaid guaranteed portion of the loan from the Holder within 30 days of written demand by the Holder when: (a) the borrower is in default not less than 60 days on principal and/or interest due on the loan, or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 days of its receipt. If the Lender agrees to repurchase, repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest, less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder will concurrently send a copy of demand to REA. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder and REA of its decision regarding repurchase.

9. REA Purchase or Payments on Guaranteed Portion Held by Holder. If the borrower is in default on its loan payments and the Lender does not repurchase the Holder's portion as provided in paragraph 8 hereof, within thirty (30) days after written demand to REA from Holder, REA will either (a) pay to Lender any shortfall in principal and interest payments by the borrower on the guaranteed portion held by the Holder, as due, to be remitted by Lender to Holder, or (b) purchase the unpaid principal balance of the guaranteed portion held by the Holder, together with accrued interest to date of repurchase, less Lender's servicing fee. In the case of option (b) herein, the Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. REA's obligation to Holder applies only in the case where the Borrower is in monetary default, and does not apply if the Borrower is not in default and the Lender fails to remit payment to Holder.

The demand to REA shall include a copy of the written demand made upon the Lender. The Holder or its duly authorization agent will also include evidence of its right to require payment from REA. Such evidence will consist of the original of the Assignment Guarantee Agreement properly assigned to REA without recourse including all rights, title and interest in the loan. REA will be subrogated to all rights of Holder. The Holder will include in its demand the amount due, including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise determined by REA, such proposed payment will not be later than 30 days from the date of demand.

REA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide REA with the information necessary for REA determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved before payment will be approved. REA will notify both parties, who must resolve the conflict to REA's satisfaction, before payment by REA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the necessary information, REA will review the demand and determine if payment is warranted, and if so, pay the Lender, who shall in turn promptly pay the Holder.

10. Lender's Obligations. Lender consents to the purchase by REA and agrees to furnish on request by REA a current statement, certified by an appropriate authorized officer of the Lender, of the unpaid principal and interest then owed by the Borrower on the loan and the amount then owed to any Holder. Lender agrees that any purchase by REA does not change, alter or modify any of the Lender's obligations to REA arising from said loan or guarantee, nor does it waive any of REA's rights against Lender, and that REA will have the right to set-off against Lender all rights inuring to REA as the Holder of this instrument against REA's obligation to Lender under the Loan Note Guarantee.

11. Repurchase by Lender for Servicing. If in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion, less Lender's servicing fee. The Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the demand letter of the Lender or REA to the Holder requesting that the Holder tender its guaranteed portion.

a. The Lender will not repurchase from the Holder for arbitrage purposes or other purposes to further its own financial gain.

(b.) No repurchase will be made without REA written approval.

(c.) If the Lender does not repurchase the Holder's portion, REA at its option may purchase such guaranteed portion for servicing purposes.

12. Foreclosure. The parties owning the guaranteed portion and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

13. Reassignment. Holder upon written notice to Lender and REA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

14. Notices.

All notice and actions will be initiated through REA at the following mailing address as of the date of this instrument.

____

Lender:

By ______________________

Title ______________________

Date ______________________

Holder:

By ______________________

Title ______________________

Date ______________________

United States of America, Rural Electrification Administration

By ______________________

Title ______________________

Date ______________________

Appendix C to Part 1739— Notice of Lender Selection

Applicable: 7 CFR parts 1712, 1719, 1739 & 1746

A. Borrower:

Name: ______________________

REA ID No. ______________________

Address: ______________________

____

Lender:

Name: ______________________

Address: ______________________

____

B. Terms and Conditions of Loan:

1. Amount: ______________________

2. Term (yrs): ______________________

3. Interest rate:

Fixed: ______________________

Variable: ______________________

If variable, state terms and base rate used to determine rate.

4. Prepayment penalty, if any: ______________________

C. State whether the borrower, its principal officers, members of the board of directors, or members of the immediate families of said officials hold any stock or other evidence of ownership in the lender's organization. If so, give details.

D. State whether the lender or its principal officers hold any stock or other evidence of ownership in the borrower, other than patronage capital. If so, give details.

E. Lender's evaluation of credit reports on borrower obtained from national or regional credit bureaus. Enclose reports.

F. List any loan origination or other fees to be charged the borrower.

G. List any loan servicing fees to be charged a holder.

H. Describe loan servicing plans.

I. Lender's evaluation of (1) the borrower's financial condition, repayment ability, management capability, and past record, and (2) the feasibility of the loan.

J. Does lender plan to market the guaranteed portion of loan? Yes______ No______ Percentage of guaranteed portion to be marketed:______%

K. Regulatory Agencies: Is lender in good standing with all regulatory agencies to which it is subject? Yes ______ No ______. If no, explain.

L. List all regulatory agencies (national, state or local) to which the lender is subject and explain if there are any pending matters with such agencies. Indicate if permits, licenses or clearances are necessary and their status.

M. If the lender is not regulated or examined by a Federal or stae agency, submit evidence that lender has established qualification requirements for principal officers and staff, and has fidelity, and errors and omissions bonding.

N. Is the lender currently debarred or suspended from participation in a Federal government contract or delinquent on any obligation to the Federal Government? Yes ______ No ______. If yes, explain.

O. If, in addition to a loan Note, a loan contract will be executed between the lender and borrower, enclose a copy of the proposed contract.

Borrower:

By: ______________________

Title: ______________________

Lender:

By: ______________________

Title: ______________________

Appendix D to Part 1739—Conditional Commitment to Guarantee

Borrower

Lender

Type of Loan

Loan No. ______________________

State

Principal Amount of Loan

From an examination of information supplied by the Lender on the above proposed loan and other relevant information, it appears that a Loan Note Guarantee can be issued.

Therefore, the United States of America, acting through the Rural Electrification Administration (REA), hereby agrees that, in accordance with applicable provisions of the REA regulations published in the Code of Federal Regulations and related forms, it will execute the "Loan Note Guarantee," subject to the conditions and requirements specified herein and in said Guarantee and the applicable REA regulations.

The interest rate for the loan is ______________ percent.[1] If a variable rate is used, it cannot change more often than monthly and must be tied to a base rate, agreed to by the Lender, the Borrower and REA, that meets the requirements of regulation 7 CFR part 1712, for electric loans, or 7 CFR part 1739, for telephone loans.

The following conditions must be met before a Loan Note Guarantee will be issued:[2]

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR parts 1712 or 1739 that there has been no material adverse change in the Borrower's financial condition nor any other material adverse changes in the Borrower's condition since the date of submission of the loan guarantee application to REA. If any such change, in the opinion of REA, threatens loan feasibility or loan security, regardless of when the change occurred or when REA became aware of it, REA is under no obligation to issue a Loan Note Guarantee.

The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and any guarantors not more than 60 days old at the time of certification. For the purposes of this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by REA. Any negotiations concerning these conditions must be completed by that time. Acceptance shall be indicated by signing and returning to REA the attached "Acceptance of Conditions" form.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out in the Borrower's loan guarantee applications:[3]

This conditional commitment will expire on ________ unless the time is extended in writing by REA, or the Lender notifies REA that it does not wish to obtain an REA guarantee.

United States of America

By: ______________________

Date: ______________________

Title: ______________________

Rural Electrification Administration

Conditional Commitment to Guarantee Acceptance of Conditions

To: Rural Electrification Administration (REA)[4]

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[1] Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V".

[2] Insert any conditions that must be met by the borrower or the lender before a Loan Note Guarantee can be issued. If none, so indicate.

[3] Explain any differences in REA-approved loan purposes or use of loan funds from those specified in the loan guarantee application. If none, so indicate.

[4] Return completed and signed copy of this acceptance statement to the REA Area Operations Branch.

The conditions of the Conditional Commitment to Guarantee including attachments are acceptable and the undersigned intend to proceed with the loan transaction and request issuance of a Loan Note Guarantee.

Name of Lender: ______

Date: ______

By: ______

(Signature of Lender)

By: ______

(Name of Borrower)

Date: ______

By: ______

(Signature of Borrower)

Appendix E to Part 1739—Loan Note Guarantee

Type of Loan ______

Applicable: 7 CFR 1712, 1719, 1739, & 1746

Borrower:

Lender:

Tax No.:

Lender's Address:

State:

Date of Note:

REA Loan No.:

Lender's IRS ID:

Principal Amount of Loan: $______

The guaranteed portion of the loan is $______, which is ______ percent of loan principal. The loan is evidenced by the following note ______ (includes bond as appropriate).

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Rural Electrification Administration (REA) pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 901 et. seq.) and 7 CFR parts 1712 and 1719 or 1739 and 1746, does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder: 100 percent of any loss sustained by such Holder on the guaranteed portion of the loan and on interest due on such portion.

B. The Lender: the lesser of (1.) or (2.) below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note or by assumption agreement, and

b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with REA's authorization, including but not limited to advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note or assumption agreement and any interest due thereon.

If REA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest after the date REA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan, accruing interest shall be covered by this Loan Note Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by REA.

Definition of Holder

The Holder is the person or organization other than the Lender that holds all or part of the guaranteed portion of the loan pursuant to an executed Assignment Guarantee Agreement. Holders have no loan servicing responsibilities and they are prohibited from obtaining any part of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from gross income under Chapter I of the Internal Revenue Code of 1986.

Definition of Lender

The Lender is the organization making and servicing the loan guaranteed by REA under the provisions of 7 CFR parts 1712 and 1719 or 1739 and 1746.

Conditions of Guarantee

1. *Loan servicing.*

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan.

2. *Priorities.*

The entire loan will be secured by the same security. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion. In the event of monetary default by the borrower, any proceeds from liquidation of the loan and any payments made by the borrower will be applied first to any loan payments made by REA under the guarantee, including any penalties assessed by REA, then to any principal and accrued interest owed on the guaranteed portion of the loan, and then to any principal and accrued interest owed on the unguaranteed portion of the loan.

3. *Full Faith and Credit.*

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder had actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest then this Loan Note guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing or failure to obtain the required security, regardless of when REA acquires knowledge of the foregoing. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. *Rights and Liabilities.*

The guarantee and right of Holder to request purchase of its portion of the loan will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by REA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to REA any payment made by REA to Holder which, if such Lender had held the guaranteed portion of the loan, REA would not be required to make.

5. *Exclusion of Tax-Exempt Financing.*

A loan is not eligible for a guarantee if the income from the loan or the income from obligations issued by the owner of the loan (Lender or Holder), when the obligations are created by the loan, is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986. The Lender shall certify to REA, and each subsequent Holder of the loan shall certify to the seller, that it is in compliance with this section. The loan guarantee and any Assignment Guarantee Agreement shall be null and void with respect to the current owner of a guaranteed portion of the loan if said owner is in violation of this section.

6. *Payments.*

Lender will receive all payments of principal and/or interest on account of the entire loan and will promptly remit to Holder its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

7. *Protective Advances.*

Protective advances made by the Lender and approved in advance by REA will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee, notwithstanding the guaranteed portion of the loan that is held by another.

8. *Repurchase by Lender.*

The Holder has the right to request that the Lender repurchase the unpaid guaranteed portion of the loan when (a) the borrower is in default not less than 60 days on principal and/or interest due on the loan, or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 days of its receipt. If the Lender agrees to repurchase, repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest, less the Lender's servicing fee. The Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder will concurrently send a copy of demand to REA. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default where reasonable. The Lender will promptly notify the Holder and REA and its decision regarding repurchase.

9. *REA Purchase or Payments on Guaranteed Portion Held by Holder.*

If the borrower is in default on its loan payments and the Lender does not repurchase the Holder's portion as provided in paragraph 8 hereof, within thirty (30) days

after written demand to REA from Holder, REA will either (a) pay to Lender any shortfall in principal and interest payments by the borrower on the guaranteed portion held by the Holder, as due, to be remitted by Lender to Holder, or (b) purchase the unpaid principal balance of the guaranteed portion held by the Holder, together with accrued interest to date of repurchase, less Lender's servicing fee. In the case of option (b) herein, the Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. REA's obligation to Holder applies only in the case where the Borrower is in monetary default, and does not apply if the Borrower is not in default and the Lender fails to remit payment to Holder.

The demand to REA shall include a copy of the written demand made upon the Lender. The Holder or its duly authorized agent will also include evidence of its right to require payment from REA. Such evidence will consist of the original of the Assignment Guarantee Agreement properly assigned to REA without recourse including all rights, title and interest in the loan. REA will be subrogated to all rights of Holder. The Holder will include in its demand the amount due, including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise determined by REA, such proposed payment will not be later than 30 days from the date of demand.

REA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide REA with the information necessary for REA determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved before payment will be approved. REA will notify both parties, who must resolve the conflict to REA's satisfaction, before payment by REA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the necessary information, REA will review the demand and determine if payment is warranted, and if so, pay the Lender, who shall in turn promptly pay the Holder.

10. *REA Purchase or Payments on Guaranteed Portion Held by Lender.*

If the Lender holds any part of the guaranteed portion of the loan and a monetary event of default has been in effect for 180 days from the payment due date, and the Lender has not been able to work out a satisfactory cure of the default, REA will at its option make payment to the Lender under one of the methods set forth below within 30 days of written demand by the Lender, provided the Lender has met all of its obligations under the Lender's Agreement:

a. REA will pay the outstanding principal balance, plus accrued interest, that the Borrower has failed to pay with respect to the portion of the guaranteed loan held by the Lender. In this case, the guarantee will not cover any note interest accruing after 90 days from the date of the demand letter by the Lender to REA.

b. REA will pay that portion of principal and interest payments owed on the guaranteed portion of the loan held by the lender that the borrower has failed to pay, plus such principal and interest payments owed on said guaranteed portion, as due, that the borrower fails to pay in the future.

11. *Lender's Obligations.*

Lender consents to the purchase by REA and agrees to furnish on request by REA a current statement, certified by an appropriate authorized officer of the Lender, of the unpaid principal and interest then owed by the Borrower on the loan and the amount then owed to any Holder. Lender agrees that any purchase by REA does not change, alter or modify any of the Lender's obligations to REA arising from said loan or guarantee, nor does it waive any of REA's rights against Lender, and that REA will have the right to set-off against Lender all rights inuring to REA as the Holder of this instrument against REA's obligation to Lender under the Loan Note Guarantee.

12. *Repurchase by Lender for Servicing.*

If in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion, less Lender's servicing fee. The Loan Note Guarantee will not cover any note interest to the Holder accruing after 90 days from the date of the demand letter of the Lender or REA to the Holder requesting that the Holder tender its guaranteed portion.

a. The Lender will not repurchase from the Holder for arbitrage purposes or other purposes to further its own financial gain.

b. No repurchase will be made without REA written approval.

c. If the Lender does not repurchase the Holder's portion, REA at its option may purchase such guaranteed portion for servicing purposes.

13. *Custody of Unguaranteed Portion.*

The Lender must retain all of the guaranteed portion of the loan in its portfolio.

14. *When Guarantee Terminates.*

The Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan, or (b) upon full payment of any loss obligation hereunder, or (c) upon written notice from the Lender to REA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to REA.

15. *Settlement.*

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part ______ of Title 7 CFR in effect on the date of this instrument.

16. *Notices.*

All notices and actions will be initiated through REA at the following mailing address as of the date of this instrument:

______

UNITED STATES OF AMERICA, Rural Electrification Administration

By: ______

Title: ______

Assumption Agreement by ______

dated ______

Assumption Agreement by ______

dated ______

Appendix F to Part 1739—LOAN NOTE

Level Debt Service

All of the Terms of this Note shall be in accordance with the applicable provisions of either 7 CFR Parts 1712 and 1719 for electric loans, or 7 CFR parts 1739 and 1746 for telephone loans.

MORTGAGE NOTE

______ 19____

1. *Amount.*

______

(hereinafter called the "Corporation"), a corporation organized and existing under the laws of the State of ______, for value received, promises to pay to the order of ______

______

(hereinafter called the "Lender"), at ______ at the times and in the manner hereinafter provided, the sum of ______ dollars ($), with interest on the amount thereof advanced by the Lender, pursuant to a certain loan contract, dated as of ______ 19____, between the Lender and the Corporation (said loan contract being hereinafter called the "Loan Contract") at the rate per annum specified in section 2.

2. *Interest Rate on Principal Advanced.*

The interest rate specified in this section shall be in accordance with 7 CFR 1712.56 or 1739.56 and is subject to approval by the Rural Electrification Administration.

3. *Payment on Advances made within a Principal Deferment Period.*

Interest on principal advanced pursuant to the Loan Contract and remaining unpaid shall be payable on the last day of each ______ [1] of each year for a period ending on ______ [2] 19______. Thereafter, to and including a date ______ [3] ( ) years after the date hereof, the Corporation shall make a payment on each of said ______ [4] dates in each year at the rate of $______ per $1,000 of the principal amount hereof advanced pursuant to the Loan Contract and unpaid as of ______ 19____. [2]

4. *Payment on Advances made after a Principal Deferment Period.*

Interest and principal payments on principal advanced after ______, 19____ [2] shall be made ______ [4] beginning with the last day of the ______ following the month of each advance of principal. Each payment on an advance shall be of an amount including interest and principal equal to every other payment on that advance over a period between the date of the first payment on that advance and a date ______ [3] ( ) years after the date of this Note. These payments shall be in addition to the payment made pursuant to Section 3.

[1] Insert billing period, eg. month, quarter.

[2] Insert ending date of principal deferral period. For electric loans, this period shall be no longer than 2 years for distribution and subtransmission facilities. For bulk transmission and generating facilities, the principal deferral period shall be approved by REA but in no case shall the amortization of principal begin later than the date these facilities are placed into service. For telephone loans this period shall be no longer than 2 years.

[3] Insert number of years between date of note and the date the note is due.

[4] Insert billing period, eg. monthly, quarterly.

years after the date of this Note. These payments shall be in addition to the payment made pursuant to Section 3.

5. *Termination of Advances.*

Except as otherwise approved by REA, the Lender's obligation to advance funds under this Note shall terminate ______ [5] ( ) years after the date hereof.

6. *Application of Payments.*

Each payment made on this Note shall be applied first to the payment of interest on principal and then on account of principal.

______ [3] ( ) years after the date hereof, the principal hereof advanced remaining unpaid, if any, and interest thereon, shall become due and payable.

7. *Prepayments.*

The loan evidenced by this note may be prepaid in full or in part, subject to the following conditions:

Any prepayment must be on both the guaranteed and unguaranteed portions of the loan, in proportion to the outstanding principal balances of each portion.

8. *Security.*

This Note has been executed and delivered pursuant to and is secured by a certain mortgage, dated as of ______, 19___ made by and among the

______

______

______

as the same may have been amended or supplemented by any supplemental mortgage or supplemental mortgages (said mortgage and any such supplemental mortgage or supplemental mortgages being hereinafter collectively called the "Mortgage"), and is one of several notes (hereinafter called the "notes") permitted to be executed and delivered by the Corporation pursuant to the Mortgage. The Mortgage provides that all notes shall be equally and ratably secured thereby and reference is hereby made to the Mortgage for a description of the property mortgaged and pledged, the nature and extent of the security and the rights of the holder of notes with respect thereto.

9. *Default.*

In case of default by the Corporation, as provided in the Mortgage, all principal advanced and remaining unpaid on this Note and any other notes at the time outstanding, and all interest thereon, may be declared or may become due and payable in the manner and with the effect provided in the Mortgage.

10. *Noteholder.*

This Note evidences indebtedness created by a loan made under the Loan Contract. If the Lender shall at any time assign all or part of the guaranteed portion of this loan, the Corporation shall continue to make payments hereunder to the Lender as collection agent for the holder, and for purposes of the Mortgage the Lender shall continue as, and shall have the rights of, the noteholder.

11. *Amendment of Note.*

This Note may be amended, subject to approval by the Rural Electrification Administration, but new Loan Notes may not be issued.

IN WITNESS WHEREOF the Corporation has caused this Note to be signed in its corporate name and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized, all as of the day and year first written above.

by ______

President

(SEAL)

Attest: ______

Secretary

4. Part 1746 is added to read as follows:

PART 1746—POST-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS

Subpart A—General

1746.1 General.
1746.2 Definitions.
1746.3–1746.49 [Reserved]

Subpart B—Section 314 Loan Guarantees—Private Sector

1746.50 Legal authority.
1746.51 Purpose.
1746.52 Loan servicing.
1746.53 Secondary transactions.
1746.54 Borrower prepayments.
1746.55 Refinancing.
1746.56 Payments under lender's agreement.
1746.57 Obligations of borrower.
1746.58 Replacement of documents.
1746.59–1746.99 [Reserved]

Authority: 7 U.S.C. 901, et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1746.1 General.

(a) This part establishes specific post-loan policies, procedures and requirements that apply to guaranteed telephone loans. Pre-loan policies, procedures and requirements are in 7 CFR part 1739.

(b) Additional post-loan policies, procedures and requirements that apply to both guaranteed and insured loans are set forth in 7 CFR part 1744. Borrowers must also comply with all other applicable REA regulations.

(c) This part supersedes those portions of REA Bulletin 320–22, Guarantee of Loans for Telephone Facilities, and supplements thereto that are in conflict.

§ 1746.2 Definitions.

The definitions in 7 CFR parts 1735, 1737 and 1744 are applicable to this part.

§§ 1746.3–1746.49 [Reserved]

Subpart B—Section 314 Loan Guarantees—Private Sector

§ 1746.50 Legal authority.

Pursuant to section 314 of the RE Act, REA may provide financial assistance to borrowers for the purposes set forth in section 201 of the RE Act by providing 90 percent guarantees of loans made by any legally organized lending agency is defined in 7 CFR 1739.52. REA may not provide a guarantee under this subpart for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States.

§ 1746.51 Purpose.

This subpart sets forth post-loan policies and procedures relating to an executed Lender's Agreement between REA and a private lender for a telephone loan guaranteed under section 314 of the REA Act.

§ 1746.52 Loan servicing.

(a) The lender shall be responsible for the following:

(1) Servicing the entire loan in accordance with the Lender's Agreement, notwithstanding the fact that another party may hold all or part of the guaranteed portion of the loan.

(2) Ensuring that all obligations of the borrower to the lender under the lender's loan agreement, Loan Note, and the security instrument have been fulfilled.

(3) Ensuring that it has obtained REA approval to advance funds prior to each advance of funds. Such approvals will relate to REA's interests and responsibilities and will not be intended in any way to represent or protect the interests of the lender.

(4) Billing and collecting loan payments from the borrower.

(5) Notifying the REA Area Operations Branch promptly, in writing, when any default in the payment of principal or interest due on a loan has been in effect for five calendar days or more. (See 7 CFR 1700.1 for a listing of states served by each Area Operations Branch.) In the case of such monetary defaults, the lender shall contact the borrower to determine the nature of the problem, and subsequently submit the following to the REA Area Operations Branch:

(i) A report, submitted promptly, setting forth the lender's views as to the reasons for the default, how long the borrower is expected to be in default, and the corrective actions being taken

[5] Insert, for electric loans, 4 years for distribution and subtransmission facilities or 7 years for bulk transmission and generating facilities. For telephone loans this period will be determined by agreement of the lender and borrower.

by the borrower to achieve a current debt service position; and

(ii) A proposal, submitted promptly for REA's approval, outlining actions to be taken by the lender and the borrower to cure the default if the default has been in effect for 30 calendar days or more. Such proposal must be delivered to REA within 35 calendar days of the date of the default.

(6) Notifying the REA Area Operations Branch promptly, in writing, if the borrower:

(i) Has failed to pay any local, state or federal taxes owed; or

(ii) Does not have adequate property and liability insurance based on prudent business practice.

(7) Reviewing the borrower's annual audited financial statement and providing a summary evaluation to the REA Area Operations Branch within 60 days of receipt of the document.

(8) Notifying the REA Area Operations Branch promptly if the borrower has not provided the required annual audited financial statement.

(9) Notifying the REA Area Operations Branch promptly of a prepayment of all or a portion of the Loan Note by the borrower.

(10) Providing written quarterly loan statement reports to the Director, Financial Operations Division, REA, within 10 working days of the end of the quarter. The reports shall include the amount of funds advanced for each Loan Note during the quarter, the date of each advance, applicable variable or fixed interest rates for the current quarter, record of variable interest rates for the past quarter, outstanding principal at the beginning and end of the quarter, accrued interest, the amount of principal and interest paid during the quarter, and other information that REA may require.

(11) Assuring that the funds are used for the purposes approved in the loan, except that the lender may rely on REA for said assurance if REA has agreed in advance in writing.

(b) In the event of a monetary default, if REA does not agree with the proposal submitted by the lender to cure the default, REA will work with the lender in an effort to develop a mutually satisfactory plan. The plan, including any initiative to accelerate the Loan Note, is subject to the written approval of REA.

(c) Upon notice to the lender, REA may assume loan servicing responsibilities for the entire loan or the guaranteed portion, or require the lender to assign such responsibilities to a different entity, if the lender fails to perform its loan servicing responsibilities under the Lender's Agreement, or if the lender becomes insolvent, makes an admission in writing of its inability to pay its debts generally as they become due, or becomes the subject of proceedings commenced under the Bankruptcy Reform, Act of 1978 (11 U.S.C. 101 et seq.) or any similar applicable Federal or state law, or is no longer is in good standing with its licensing authority, or ceases to meet the eligibility requirements of 7 CFR 1739.52. Such negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed, and includes not only a failure to act but also not acting in a timely manner.

(d) If loan servicing is assumed by REA or reassigned to another entity, the lender shall cease collecting loan servicing fees for that portion of the loan for which servicing has been assumed or reassigned, and loan servicing fees shall be paid to REA or such other entity.

(e) If REA determines that a lender is negligent in its required loan servicing responsibilities under the Lender's Agreement, such negligent servicing will cause the guarantee to be unenforceable by the lender to the extent such negligent servicing is determined to have caused a loss. If all or part of the guaranteed portion of the loan has been assigned to a holder, such negligent servicing shall not affect the holder's rights under the Assignment Guarantee Agreement, except that REA's guarantee does not extend to guaranteeing that a lender will remit to a holder the holder's legitimate share of any payments made by the borrower.

(f) The lender shall reimburse REA for any payments made to a holder under the guarantee on account of negligent servicing.

§ 1746.53 Secondary transactions.

(a) As set forth in 7 CFR 1739.62, lenders are authorized to assign to a holder up to 100 percent of the guaranteed portion of a loan, provided the loan is not in payment default.

(b) The initial assignment by a lender requires prior written approval from REA. Subsequent assignments by holders do not require REA approval.

(c) An assignment shall entitle the holder to all of the lender's rights under the Loan Note Guarantee to the extent of the guaranteed loan purchased. However, the lender shall remain responsible for servicing the entire loan and shall continue to be bound by all obligations under the Loan Note Guarantee and the Lender's Agreement.

(d) The borrower, its principal officers, members of the borrower's board of directors, and members of the immediate families of said officials shall not be a holder of the borrower's loan.

(e) An Assignment Guarantee Agreement, prepared by the lender using appendix B to 7 CFR part 1739 as a guide to the extent practicable, will be executed between REA, the lender and the holder evidencing the amount of the guaranteed portion of the loan assigned. The lender shall send the original of the Assignment Guarantee Agreement to the holder and a conformed copy to REA.

(f) The holder, and any subsequent holder, with prior written approval of the lender, may reassign its unpaid guaranteed portion of the loan. The lender shall maintain adequate records to enable verification, at any time, as to the legal holder of the assigned portion of the loan.

(g) The assigned portion of a loan may be held by only one holder at a time. This, however, does not prohibit two or more entities from consolidating into a single entity as holder.

(h) As set forth in 7 CFR 1739.53, holders are prohibited from obtaining any part of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under Chapter I of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(21) et seq.).

§ 1746.54 Borrower prepayments.

(a) Loans under this subpart may be prepaid in full or in part in accordance with the terms of the Loan Note or loan agreement. Any prepayment must be on both the guaranteed and unguaranteed portions of the loan, in proportion to the outstanding principal balances of said portions. Depending on the lender, there may be a premium associated with such prepayment.

(b) Prepayment of a guaranteed loan under this subpart shall be accompanied by a simultaneous prepayment of any other loan made concurrently with such loan, including any REA insured or guaranteed loan, or any Rural Telephone Bank loan, if requested by the RTB. Such prepayment shall be on a pro rata basis according to the outstanding principal balances of said loans and in accordance with the specific terms of the joint mortgage or other security instrument that provides common security for such loans.

§ 1746.55 Refinancing.

With REA approval, loans under this subpart may be refinanced under the Loan Note Guarantee if, in REA's sole judgment, such refinancing will not increase REA's loan guarantee risk or

otherwise adversely affect the government's interests.

§ 1746.56 Payments under lender's agreement.

(a) In the case of both monetary and non-monetary events of default, REA will work with the borrower and the lender in an effort to eliminate the borrower's default as soon as possible.

(b) Non-monetary defaults will not trigger any payments by REA.

(c) REA's guarantee is limited to paying the amount by which payments made by the borrower, any amounts received from set-offs, and any proceeds received from liquidation are less than the principal and scheduled interest owed on the guaranteed portion of the loan. REA's guarantee does not cover penalty interest or a lender's collection costs, although certain reasonable liquidation costs approved by REA may be deducted from the gross proceeds from the liquidation of collateral, as provided in the Lender's Agreement.

(d) In the event of a monetary default by the borrower;

(1) Any payments made by the borrower on any loan or other obligations of the borrower held by the lender shall be applied pro rata to said obligations secured under the mortgage based on the outstanding principal balances thereof; and

(2) Any payments made by the borrower on the guaranteed loan, any amounts received from set-offs, and any proceeds received from liquidation shall be applied first to reimburse REA for any payments made under the guarantee. Any amounts remaining after said application shall be applied first to the guaranteed portion of the loan, up to the full amount owned on said portion, and second to the unguaranteed portion of the loan.

(e) If a holder has been assigned all or any part of the guaranteed portion of the loan, payment to the holder will proceed as follows:

(1) After a monetary event of default has been in effect for 60 calendar days from the payment due date, the holder may request in writing that the lender repurchase the assigned portion of the loan. Within 30 calendar days of receipt of such demand, the lender shall either repurchase the assigned portion of the loan or inform the holder and REA in writing that it does not intend to repurchase said portion.

(2) REA encourages lenders to repurchase the assigned portion of a loan in monetary default. Such repurchase will enhance a lender's ability to pursue payment remedies, with REA's approval, including but not limited to principal deferments, changes in interest rates, or reamortization of payments.

(3) If the lender does not repurchase the loan from the holder as provided in paragraph (e)(1) of this section, upon written demand by the holder REA will, in accordance with the Assignment Guarantee Agreement, either:

(i) Pay the outstanding principal balance owed, plus accrued interest, that the borrower has failed to pay with respect to the portion of the guaranteed loan held by the holder; or

(ii) Pay that portion of principal and interest payments owed the holder that the borrower has failed to pay, plus such principal and interest payments owed the holder, as due, that the borrower fails to pay in the future.

(4) REA will make payment under paragraph (e)(3) of this section within 30 calendar days of receiving the written demand of the holder and verification of the identity of the legal holder and the amounts owed.

(5) Payments by REA will be made to the lender, who shall be responsible for paying the holder.

(6) REA's obligation to make payments, as set forth in the Assignment Guarantee Agreement, relates only to the failure of a borrower to make principal and interest payments required under the guaranteed Loan Note. REA's guarantee does not extend to guaranteeing that the lender will remit to the holder principal and interest payments made by the borrower, or by REA under the guarantee. Nor does REA guarantee any premiums that may be associated with secondary transactions.

(f) If the lender holds any part of the guaranteed portion of the loan and a monetary event of default has been in effect for 180 calendar days from the payment due date, and the lender has not been able to work out a satisfactory cure of the default, REA will make payment to the lender under one of the methods set forth below within 30 calendar days of written demand by the lender, provided the lender has taken all reasonable steps in an attempt to cure the default and has met all of its obligations under the Lender's Agreement:

(1) Pay the lender the outstanding principal balance, plus accrued interest, that the borrower has failed to pay with respect to the portion of the guaranteed loan held by the lender; or

(2) Pay the lender that portion of principal and interest payments owed on the guaranteed portion of the loan held by the lender that the borrower has failed to pay, plus such principal and interest payments owed on said guaranteed portion, as due, that the borrower fails to pay in the future.

(g) In considering its payment options, REA will select, on a case by case basis, the option that is in the best interest of the Government.

(h) When REA has made a payment under the Loan Note Guarantee, it will establish in its accounts the amount of the payment as due and payable from the borrower, with interest accruing on all amounts owed, at the rate of interest specified in the Loan Note.

§ 1746.57 Obligations of borrower.

(a) Borrowers must meet the applicable requirements of this subpart, subpart B of 7 CFR part 1739, and all other REA regulations.

(b) A borrower must provide the lender with information that is reasonably required to make and service the loan.

§ 1746.58 Replacement of documents.

REA may issue a replacement Loan Note Guarantee, Lender's Agreement or Assignment Guarantee Agreement that has been lost, stolen, destroyed, mutilated or defaced upon receipt of documentation, satisfactory to REA, evidencing the loss of the original document. The lender shall coordinate the replacement of the document and submit the following documentation to REA:

(a) A certificate of loss properly notarized which shall include:

(1) The legal name and address of lender and the capacity of the person certifying.

(2) The legal name and present address of the owner who is requesting the replacement document.

(3) Identification of the document, including the name of the borrower, face amount of Loan Note, date of the Loan Note, present balance of the loan, and percentage of guarantee. If an assignment is involved, identification shall also include the name of the current holder and any previous holders and the percentage of the guaranteed portion of the loan assigned. If the current holder is not the same as the original holder, a copy of the endorsement of each previous holder in the chain of transfer shall be included.

(4) A full statement of the circumstances of the loss, theft or destruction of the document.

(b) An indemnity bond acceptable to REA shall accompany the request for replacement of the document. The bond shall be with surety except when the outstanding principal balance and accrued interest due the holder is less than $1,000,000. Such outstanding balance shall be certified by the lender in writing. All indemnity bonds shall be

issued or payable to the United States of America acting through the REA. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save REA harmless against any claim or demand that might arise or against any damage, loss, costs or expenses that might be sustained or incurred by reasons of the loss or replacement of the instruments.

§§ 1746.59–1746.99 [Reserved]

Dated: July 22, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91-19857 Filed 8-26-91; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1712, 1719, 1739 and 1746

Pre- and Post-Loan Policies and Procedures for Guaranteed Electric and Telephone Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Pre-loan policies and procedures common to insured and guaranteed electric loans were published as a proposed rule 7 CFR 1710 at 56 FR 8234, on February 27, 1991. Previously published regulations, 7 CFR part 1735, 1737 and 1744, codified pre-loan and post-loan policies and procedures common to insured and guaranteed telephone loans. This proposed rule continues the program to consolidate, update and clarify policies and requirements contained in various REA publications by proposing requirements specific to guaranteed loans authorized under section 306 of the Rural Electrification Act (RE Act).

DATES: Written comments must be received by REA or carry a postmark or equivalent by October 28, 1991.

ADDRESSES: Written comments should be addressed to Sharon E. Ashurst, U.S. Department of Agriculture, Rural Electrification Administration, room 1270, 14th & Independence Avenue, SW., Washington, DC 20250–1500. REA requires an original and 3 copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection at room 1270 (address as above) during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator-Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4048–S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, telephone (202) 382–9547.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Department Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Regulatory Flexibility Act Certification

Gary C. Byrne, Administrator, REA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most borrowers of REA loans do not meet the requirements for small entities. Further, the regulations are applied equally to all borrowers.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the new information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

Gary C. Byrne, Administrator, REA, has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environment Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees, and No. 10.851 Rural Telephone Loans and Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

New 7 CFR parts 1712 and 1719 which establish respectively the pre-loan and post-loan requirements specific to guaranteed electric loans under section 314 of the RE Act are published elsewhere in this issue.

Proposed subpart C of 7 CFR parts 1712 and 1719 would codify the policies and procedures for 100 percent guarantees of loans from the private sector authorized under section 306 of the RE Act. Up to 80 percent of such a guaranteed loan could be assigned to a holder. Although there is minimal risk in the case of a fully guaranteed loan, requiring the lender to hold a portion of the loan should provide some incentive for the lender to use diligence in loan servicing. Failure to do so could result in voidance of the loan guarantee. Eighty percent is proposed as an upper limit for the assignment to be consistent with Federal credit guidelines that recommend private lenders should bear risk exposure for at least 20 percent of the principal amount of a guaranteed loan (OMB Circular A–129 (Rev.)).

Proposed subpart D of 7 CFR parts 1712 and 1719 would codify existing policies and procedures for 100 percent guarantees of loans from the FFB authorized under section 306 of the RE Act.

New 7 CFR parts 1739 and 1746, establishing respectively the pre-loan and post-loan requirements specific to guaranteed telephone loans under section 314 of the RE Act, are published elsewhere in this issue.

Proposed subparts C and D of 7 CFR parts 1739 and 1746 codify the requirements for guaranteed telephone loans under section 306 of the RE Act. These subparts are essentially the same as the proposed subparts C and D of 7 CFR parts 1712 and 1719 except in the relatively few areas where the wording had to be adapted to the telephone program. The proposed subparts of 7 CFR parts 1739 and 1746 contain the full text applicable to the telephone program in cases where these changes were necessary, otherwise they refer to the applicable sections of 7 CFR parts 1712 and 1719.

List of Subjects

7 CFR Part 1712 and 1719

Administrative practice and procedure, Electric power, Electric utilities, Guaranteed loan program, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Parts 1739 and 1746

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephon

For the reasons set out in the preamble, REA proposes to amend 7 CFR chapter XVII as set forth below:

CHAPTER XVII—[AMENDED]

PART 1712—[AMENDED]

1. The authority for part 1712 continues to read as follows:

Authority: 7 U.S.C. 901 et seq.; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Part 1712 is amended by adding subparts C and D to read as follows:

Subpart C—Section 306 Loan Guarantees—Private Sector

Subpart D—Section 306 Loan Guarantees—Federal Financing Bank

Subpart C—Section 306 Loan Guarantees—Private Sector

§ 1712.100 Legal authority.

Pursuant to section 306 of the RE Act, REA may provide financial assistance to borrowers for the purposes set forth in section 4 of the RE Act by providing 100 percent guarantees of loans made by any legally organized lending agency as defined in § 1712.52.

§ 1712.101 Applicability of subpart B of this part.

The provisions of subpart B of this part shall apply to loan guarantees made under this subpart, except as otherwise indicated in §§ 1712.102 through 1712.149.

§ 1712.102 Eligible loan purposes.

REA may provide 100 percent loan guarantees for any loan purposes set forth in REA regulations.

§ 1712.103 Loan guarantee limit.

(a) REA will guarantee the repayment of 100 percent of the outstanding loan principal and 100 percent of the scheduled interest on the outstanding loan principal. A lesser proportion may be guaranteed if requested by the lender.

(b) REA's guarantee is limited to the loan repayment obligation of the borrower and does not extend to guaranteeing that a lender will make payments owed to a holder.

§ 1712.104 Loan security.

In view of the lack of risk to the lender for loans guaranteed under this subpart, only REA will obtain mortgage security on account of the guaranteed loan.

§ 1712.105 Secondary transactions.

(a) Lenders are permitted to assign to a holder up to 80 percent of the guaranteed portion of a loan, provided the loan is not in payment default. The assignment may be by direct sale of all or part of the guaranteed portion of the loan to the holder, or by other means. The assignment must comply with the provisions of 7 CFR 1719.53, and be evidenced by an Assignment Guarantee Agreement, based on Appendix B of this part to the extent practicable.

(b) If REA makes a payment under the Lender's Agreement, the lender is responsible for remitting to the holder that portion of the payment due the holder as set forth in 7 CFR 1719.56 and the Lender's Agreement.

§ 1712.106 Loan documentation.

The document examples set forth in appendices A through F of this part shall be used as a guide to the extent practicable for loans guaranteed under this subpart.

§ 1712.107–1712.149 [Reserved]

Subpart D—Section 306 Loan Guarantees—Federal Financing Bank

§ 1712.150 Legal authority.

Pursuant to section 306 of the RE Act, REA may provide financial assistance to borrowers for the purposes set forth in section 4 of the RE Act by providing 100 percent guarantees of loans made by the Federal Financing Bank (FFB).

§ 1712.151 Federal budget accounting.

For the purpose of Federal budget accounting, financial assistance made available under this subpart is treated as a loan made directly by REA.

§ 1712.152 Applicability of subpart B of this part.

The following sections of subpart B of this part also apply under this subpart:

(a) § 1712.57, Loan maturity; and

(b) § 1712.59, Advance of funds.

§ 1712.153 Eligible loan purposes.

REA may provide 100 percent loan guarantees for any loan purposes set forth in REA regulations.

§ 1712.154 Eligible lenders.

If an applicant is eligible for a loan guarantee under section 306 of the RE Act and requests that the loan be made by the FFB instead of a private lender, the FFB is required to make the loan, subject to the availability of authorized funds. This subpart covers only guarantees of loans made by the FFB. Guarantees of loans from private lenders under section 306 of the RE Act are covered in subpart C of this part.

§ 1712.155 Loan guarantee limit.

REA will guarantee repayment of 100 percent of the outstanding loan principal and 100 percent of the interest on the outstanding loan principal.

§ 1712.156 Loan security.

Since there is no risk to the FFB, only REA will obtain mortgage security on account of the guaranteed loan.

§ 1712.157 Refinancing.

Loans guaranteed under this subpart may be refinanced with an REA guarantee under section 306 A of the RE Act if they meet the requirements of 7 CFR part 1786.

§ 1712.158 Fees for guaranteed loans.

REA does not charge the borrower any fee for its guarantee. However, under the Amended and Restated Loan Commitment Agreement between REA and the FFB, an annual loan servicing fee may be charged.

§ 1712.159 Borrower's loan guarantee application.

An applicant requesting a loan guarantee under this subpart shall follow the procedures and requirements of § 1712.65, except that the Notice of Lender Selection is not required. Instead, the certified resolution of the borrower's board of directors requesting the loan guarantee shall include the request that the FFB be the lender.

§ 1712.160 Conditional commitment to guarantee.

(a) REA will commit to guarantee an FFB loan, subject to conditions to be met

by the borrower, when the administrative findings applicable to the loan are signed.

(b) REA's conditional commitment to guarantee will be provided to the FFB and borrower. Such commitment will include the following:

(1) The interest rate provisions of the loan, the loan amount and purposes, and the conditions precedent to the execution of a loan guarantee by REA and the advance of guaranteed funds by the FFB.

(2) A request that the borrower sign the "Acceptance of Conditions" section of the conditional commitment to guarantee and return it to REA by the date specified indicating its acceptance of the stated terms and conditions and requesting the issuance of a loan guarantee by REA.

(c) If REA determines it is unable to guarantee a loan, REA will notify the borrower in writing. Such notification will include the reasons for denial of the guarantee.

§ 1712.161 Other provisions.

(a) Other provisions of guaranteed FFB loans regarding interest rates, repayment terms, loan notes, and loan servicing are set forth in the Amended and Restated Loan Commitment Agreement between the FFB and REA, which includes the form of the loan note. Said agreement may be revised from time to time by the mutual consent of REA and the FFB.

(b) A copy of said agreement is given to the borrower at the time the FFB commits to make the loan. Other copies of the agreement may be obtained from REA.

§ 1712.162 Execution of final documents.

(a) REA will execute the loan agreement and the security instruments, if applicable. REA will send a transmittal letter to the borrower enclosing the agreement between REA and the FFB, a notice evidencing the commitment by FFB to make a loan, the loan note to be guaranteed by REA, the loan agreement, the security instrument, if applicable, and other loan documents associated with the execution, delivery, recording and filing of the security instruments. This transmittal letter will also establish a date for returning the executed loan and security documents to REA.

(b) Borrowers under the jurisdiction of a state regulatory authority may obtain samples of the loan and security documents in advance from REA in order to begin proceedings with the state authority.

(c) The borrower shall be required to execute and send the following documents to REA:

(1) The security instruments, if applicable, as executed by REA;

(2) The loan agreement, as executed by REA;

(3) The loan note; and

(4) Other loan documents, as directed by REA.

(d) If a borrower is unable to meet the date for returning the executed documents to REA, the borrower shall promptly notify REA.

(e) When a borrower has executed and returned to REA all the required documents in form and substance satisfactory to REA, and the FFB has approved the transaction, REA will execute the loan guarantee and certify to the FFB that it has executed the Amended and Restated Loan Commitment Agreement and received the executed loan note from the borrower.

(f) If REA determines that it cannot execute the loan guarantee because all requirements have not been met, REA will inform the borrower of the reasons and establish a reasonable period for the borrower to resolve the problem, if possible.

§§ 1712.163–1712.199 [Reserved]

PART 1719—[AMENDED]

3. The authority for part 1719 continues to read as follows:

Authority: 7 U.S.C. 901 et seq.; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

4. Part 1719 is amended by adding subparts C and D to read as follows:

Subpart C—Section 306 Loan Guarantees—Private Sector

Subpart D—Section 306 Loan Guarantees—Federal Financing Bank

Subpart C—Section 306 Loan Guarantees—Private Sector

§ 1719.100 Legal authority.

The legal authority for this subpart is the same as that cited in subpart C of 7 CFR part 1712.

§ 1719.101 Purpose.

This subpart sets forth post-loan policies and procedures relating to an executed Lender's Agreement between REA and a private lender for a loan guaranteed under section 306 of the RE Act.

§ 1719.102 Applicability of subpart B of this part.

The provisions of subpart B of this part apply to loan guarantees under this subpart, except as set forth in §§ 1719.103 through 1719.149.

§ 1719.103 Secondary transactions.

Policies and procedures with respect to secondary transactions are the same under this subpart as those set forth in § 1719.53 of subpart B except that the lender shall not assign more than 80 percent of the guaranteed loan to a holder.

§ 1719.104 Obligations of borrower.

(a) Borrowers must meet the applicable requirements of this subpart, subpart C of 7 CFR part 1712, and all other REA regulations.

(b) A borrower must provide the lender with information that is reasonably required to make and service the loan.

§ 1719.105–1719.149 [Reserved]

Subpart D—Section 306 Loan Guarantees—Federal Financing Bank

§ 1719.150 Legal authority.

The legal authority for this subpart is the same as that cited in subpart D of 7 CFR part 1712.

§ 1719.151 Purpose.

This subpart sets forth post-loan policies and procedures for electric loans made by the Federal Financing Bank (FFB) and guaranteed by REA under section 306 of the RE Act.

§ 1719.152 Borrower prepayments.

The conditions and terms for prepaying an FFB loan are set forth in the loan note.

§ 1719.153 Other provisions.

Other post-loan policies and procedures for guaranteed FFB loans regarding REA loan servicing responsibilities, REA payments to FFB under the guarantee, the substitution of

the latest form of the loan note for earlier versions, and other matters are set forth in the Amended and Restated Loan Commitment Agreement between the FFB and REA. Said agreement may be revised from time to time by the mutual consent of REA and the FFB.

§ 1719.154 Obligations of borrower.

(a) Borrowers must meet the applicable requirements of this subpart, subpart D of 7 CFR part 1712, and all other REA regulations.

(b) A borrower must provide REA with information that is reasonably required to make and service the loan.

§ 1719.155–1719.199 [Reserved]

PART 1739—[AMENDED]

5. The authority for part 1739 continues to read as follows:

Authority: 7 U.S.C. 901, *et seq.*, 7 U.S.C. 1921 *et seq.*

6. Part 1739 is amended by adding subparts C and D to read as follows:

Subpart C—Section 306 Loan Guarantees—Private Sector

Subpart D—Section 306 Loan Guarantees—Federal Financing Bank

Subpart C—Section 306 Loan Guarantees—Private Sector

§ 1739.100 Legal authority.

Pursuant to section 306 of the RE Act, REA may provide financial assistance to borrowers for the purposes set forth in section 201 of the RE Act by providing 100 percent guarantees of loans made by any legally organized lending agency as defined in § 1739.52.

§ 1739.101 Applicability of subpart B of this part.

The provisions of subpart B of this part shall apply to loan guarantees made under this subpart, except as otherwise indicated in §§ 1739.102 through 1739.149.

§ 1739.102 Eligible loan purposes.

REA may provide 100 percent loan guarantees for the loan purposes set forth in 7 CFR part 1735.

§ 1739.103 Loan guarantee limit.

(a) REA will guarantee the repayment of 100 percent of the outstanding loan principal and 100 percent of the scheduled interest on the outstanding loan principal. A lesser proportion may be guaranteed if requested by the lender.

(b) REA's guarantee is limited to the loan repayment obligation of the borrower and does not extend to guaranteeing that a lender will make payments owed to a holder.

§ 1739.104 Loan security.

In view of the lack of risk to the lender for loans guaranteed under this subpart, only REA will obtain mortgage security on account of the guaranteed loan.

§ 1739.105 Secondary transactions.

(a) Lenders are permitted to assign to a holder up to 80 percent of the guaranteed portion of a loan, provided the loan is not in payment default. The assignment may be by direct sale of all or part of the guaranteed portion of the loan to the holder, or by other means. The assignment must comply with the provisions of 7 CFR 1746.53, and be evidenced by an Assignment Guarantee Agreement, based on Appendix B of this part to the extent practicable.

(b) If REA makes a payment under the Lender's Agreement, the lender is responsible for remitting to the holder that portion of the payment due the holder as set forth in 7 CFR 1746.56 and the Lender's Agreement.

§ 1739.106 Loan documentation.

The document examples set forth in appendices A through F of 7 CFR part 1739 shall be used as a guide to the extent practicable for loans guaranteed under this subpart.

§§ 1739.107–1739.149 [Reserved]

Subpart D—Section 306 Loan Guarantees—Federal Financing Bank

§ 1739.150 Legal authority.

Pursuant to Section 306 of the RE Act, REA may provide financial assistance to borrowers for the purposes set forth in section 201 of the RE Act by providing 100 percent guarantees of loans made by the Federal Financing Bank (FFB).

§ 1739.151 Federal budget accounting.

For the purpose of Federal Budget accounting, financial assistance made available under this subpart is treated as a loan made directly by REA.

§ 1739.152 Applicability of subpart B of this part.

The following sections of subpart B of this part also apply under this subpart:

(a) § 1739.57, Loan maturity; and

(b) § 1739.59, Advance of funds.

§ 1739.153 Eligible loan purposes.

REA may provide 100 percent loan guarantees for the loan purposes set forth in 7 CFR part 1735.

§ 1739.154 Eligible lenders.

All provisions of 7 CFR 1739.154 are applicable to this section.

§ 1739.155 Loan guarantee limit.

REA will guarantee repayment of 100 percent of the outstanding loan principal and 100 percent of the interest on the outstanding loan principal.

§ 1739.156 Loan security.

Since there is no risk to the FFB, only REA will obtain mortgage security on account of the guaranteed loan.

§ 1739.157 Refinancing.

Loans guaranteed under this subpart may be refinanced with an REA guarantee under section 306 A of the RE Act if they meet the requirements of 7 CFR part 1786.

§ 1739.158 Fees for guaranteed loans.

REA does not charge the borrower any fee for its guarantee. However, under the Amended and Restated Loan Commitment Agreement between REA and the FFB, an annual loan servicing fee may be charged.

§ 1739.159 Borrower's loan guarantee application.

An applicant requesting a loan guarantee under this subpart shall follow the procedures and requirements of § 1739.65, except that the Notice of Lender Selection is not required. Instead, the borrower shall request that the FFB be the lender.

§ 1739.160 Conditional commitment to guarantee.

(a) REA will commit to guarantee an FFB loan, subject to conditions to be met by the borrower, when the administrative findings applicable to the loan are signed per 7 CFR part 1737, subpart J.

(b) REA's conditional commitment to guarantee will be provided to the FFB and borrower. Such commitment will include the following:

(1) The interest rate provisions of the loan, the loan amount and purposes, and the conditions precedent to the execution of a loan guarantee by REA and the advance of guaranteed funds by the FFB.

(2) A request that the borrower sign the "Acceptance of Conditions" section of the conditional commitment to guarantee and return it to REA by the date specified indicating its acceptance of the stated terms and conditions and requesting the issuance of a loan guarantee by REA.

(c) If REA determines it is unable to guarantee a loan, REA will notify the borrower in writing. Such notification will include the reasons for denial of the guarantee.

§ 1739.161 Other provisions.

(a) Other provisions of guaranteed FFB loans regarding interest rates, repayment terms, loan notes, and loan servicing are set forth in the Amended and Restated Loan Commitment Agreement between the FFB and REA, which includes the form of the loan note. Said agreement may be revised from time to time by the mutual consent of REA and the FFB.

(b) A copy of said agreement is given to the borrower at the time the FFB commits to make the loan. Other copies of the agreement may be obtained from REA.

§ 1739.162 Execution of final documents.

(a) REA will execute the loan agreement and the security instruments, if applicable. REA will send a transmittal letter to the borrower enclosing the agreement between REA and the FFB, a notice evidencing the commitment by FFB to make a loan, the loan note to be guaranteed by REA, the loan agreement, the security instrument, if applicable, and other loan documents associated with the execution, delivery, recording and filing of the security instruments. This transmittal letter will also establish a date for returning the executed loan and security documents to REA.

(b) Borrowers under the jurisdiction of a state regulatory authority may obtain samples of the loan and security documents in advance from REA in order to begin proceedings with the state authority.

(c) The borrower shall be required to execute and send the following documents to REA:

(1) The security instruments, if applicable, as executed by REA;

(2) The loan agreement, as executed by REA;

(3) The loan note; and

(4) Other loan documents, as directed by REA.

(d) If a borrower is unable to meet the date for returning the executed documents to REA, the borrower shall promptly notify REA.

(e) When a borrower has executed and returned to REA all the required documents in form and substance satisfactory to REA, and the FFB has approved the transaction, REA will execute the loan guarantee and certify to the FFB that it has executed the Amended and Restated Loan Commitment Agreement and received the executed loan note from the borrower.

(f) If REA determines that it cannot execute the loan guarantee because all requirements have not been met, REA will inform the borrower of the reasons and establish a reasonable period for the borrower to resolve the problem, if possible.

§§ 1739.163–1739.199 [Reserved]

PART 1746—[AMENDED]

7. The authority for part 1746 continues to read as follows:

Authority: 7 U.S.C. 901, et seq., 7 U.S.C. 1921 et seq.

8. Part 1746 is amended by adding subparts C and D to read as follows:

Subpart C—Section 306 Loan Guarantees—Private Sector

Subpart D—Section 306 Loan Guarantees—Federal Financing Bank

Subpart C—Section 306 Loan Guarantees—Private Sector

§ 1746.100 Legal authority.

The legal authority for this subpart is the same as that cited in subpart C of 7 CFR part 1739.

§ 1746.101 Purpose.

This subpart sets forth post-loan policies and procedures relating to an executed Lender's Agreement between REA and a private lender for a loan guaranteed under section 306 of the RE Act.

§ 1746.102 Applicability of subpart B of this part.

The provisions of subpart B of this part apply to loan guarantees under this subpart, except as set forth in §§ 1746.103 through 1746.149.

§ 1746.103 Secondary transactions.

Policies and procedures with respect to secondary transactions are the same under this subpart as those set forth in § 1746.53 of subpart B except that the lender shall not assign more than 80 percent of the guaranteed loan to a holder.

§ 1746.104 Obligations of borrower.

(a) Borrowers must meet the applicable requirements of this subpart, subpart C of 7 CFR part 1739, and all other REA regulations.

(b) A borrower must provide the lender with information that is reasonably required to make and service the loan.

§§ 1745.105–1746.149 [Reserved]

Subpart D—Section 306 Loan Guarantees—Federal Financing Bank

§ 1746.150 Legal authority.

The legal authority for this subpart is the same as that cited in subpart D of 7 CFR part 1739.

§ 1746.151 Purpose.

This subpart sets forth post-loan policies and procedures for telephone loans made by the Federal Financing Bank (FFB) and guaranteed by REA under section 306 of the RE Act.

§ 1746.152 Borrower prepayments.

The conditions and terms for prepaying an FFB loan are set forth in the loan note.

§ 1746.153 Other provisions.

Other post-loan policies and procedures for guaranteed FFB loans regarding REA loan servicing responsibilities, REA payments to FFB under the guarantee, the substitution of the latest form of the loan note for earlier versions, and other matters are set forth in the Amended and Restated Loan Commitment Agreement between the FFB and REA. Said agreement may be revised from time to time by the mutual consent of REA and the FFB.

§ 1746.154 Obligations of borrower.

(a) Borrowers must meet the applicable requirements of this subpart, subpart D of 7 CFR part 1739, and all other REA regulations.

(b) A borrower must provide REA with information that is reasonably required to make and service the loan.

§§ 1746.155–1746.199 [Reserved]

Dated: July 22, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91-19856 Filed 8-26-91; 8:45 am]

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§ 1746.154 Obligations of borrowers.

(a) Borrowers must meet the applicable requirements of this subpart, subpart D of 7 CFR part 1710, and all other REA regulations.

(b) A borrower must provide REA with information that is reasonably required to make and service the loan.

§§ 1746.155–1746.200 [Reserved]

Dated: [illegible] August, 1991.

Roland R. Vautour,

Under Secretary, Small Community and Rural Development.

[FR Doc. 91–[illegible] Filed 8–26–91; 8:45 am]

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Tuesday
August 27, 1991

Part IV

Environmental Protection Agency

40 CFR Parts 261, 265, and 266

Burning of Hazardous Waste in Boilers and Industrial Furnaces; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 265 and 266

[EPA/OWS-FR-91- ; SWH-FRL-3987-6]

Burning of Hazardous Waste in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This notice makes several technical amendments to the final rule for boilers and industrial furnaces burning hazardous waste. See 56 FR 7134–7240 (February 21, 1991). These revisions provide clarification and correct unintended consequences of the rule.

EFFECTIVE DATE: August 21, 1991.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at: (800) 424–9346 (toll free) or (703) 920–9810. For more specific aspects of the final rule, contact Shiva Garg, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

A. Technical Amendments

On February 21, 1991, the Agency published a final rule which expanded controls on hazardous waste combustion by regulating air emissions from the burning of hazardous waste in boilers and industrial furnaces (i.e., the BIF rule). See 56 FR 7134. In particular, these rules control emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas, and particulate matter from those boilers and industrial furnaces burning hazardous waste. In addition, the rules subject owners and operators of these devices to the general facility standards applicable to hazardous waste treatment, storage, and disposal facilities.

Since publication of the rule, the Agency has received many questions requesting clarification on certain provisions in both the rule and preamble. In addition, in a number of cases, the Agency was questioned as to whether the rule as promulgated truly reflected the Agency's intent. As a result of these questions and as a result of the Agency's own review, we believe it necessary to publish a technical amendment to the boiler and industrial furnace rule so as to clarify the operation of the regulation and to correct certain unintended consequences. (Note that EPA has previously published several technical corrections and amendments to the February 21 final rule (56 FR 32688 (July 17, 1991)). Today's amendments also correct several errors published in the July 17, 1991 notice.)

Finally, we note that all of the petitioners on the BIF rule were given the opportunity to comment on the Agency's proposed approach to address several of the issues that are the subject of today's amendments. Although most of the commenters' concerns are addressed in the discussion below, we have responded to other comments in a memorandum to the docket (i.e., Docket Numbers F-87-BBFP-FFFFF and F-89-BBSP-FFFFF), located in the EPA RCRA docket, room 2427, 401 M Street SW., Washington, DC 20460.

1. *BIFs Operating in Interim Status Prior to August 21, 1991 May Continue Burning Low Heating Value Waste Prior to Certification of Compliance.* The final rule supersedes the sham recycling policy when an owner or operator submits a certification of compliance. See 56 FR 7183–84 (February 21, 1991) and § 266.103(a)(6). With two explicit exceptions [1] hazardous waste with a heating value less than 5,000 Btu/lb may not be burned prior to certification of compliance. After promulgation of the rule, EPA realized that the rule inadvertently precludes those BIFs that, in order to burn hazardous waste for destruction, elected to comply with the interim status standards for incinerators (subpart O, part 265) or thermal treatment units (subpart P, part 265) prior to August 21, 1991 [2] from continuing to burn waste for destruction prior to certification of compliance. Given that the Agency did not intend to penalize BIFs that elected to comply with RCRA standards before the effective date of the BIF rule, EPA is making a technical amendment to § 266.103(a)(6). (Indeed, it would be quite unfair to penalize facilities operating within the letter of existing rules—i.e., those that had entered the subtitle C system as incinerators or thermal treatment units.) In today's final rule, § 266.103(a)(6)(iii) is added to allow such facilities to continue their normal practices of burning low heating value wastes. We note that, because the BIF interim status standards supersede the incinerator or thermal treatment interim status standards for such facilities (see 56 FR 7188), the facilities are subject to

[1] That is, burning for purposes of testing for a total time not to exceed 720 hours, and burning waste solely as an ingredient.

[2] We considered restricting this provision to facilities operating under interim status prior to February 21, 1991, the publication date of the rule, to preclude owners and operators from beginning to operate under interim status after that date solely to avoid the restriction on burning low heating value waste prior to certification of compliance. However, as explained later in the text, a facility is eligible for interim status only when a unit is newly regulated or when a unit manages newly regulated waste.

the BIF regulations on August 21, 1991, including certification of precompliance.

We note that some BIFs that elected to comply with the interim status incinerator or thermal treatment standards prior to August 21, 1991 may have done so for reasons other than to enable them to burn low heating value hazardous waste. Given that today's amendment allows facilities to continue their *normal* practices of burning low heating value hazardous waste, facilities that do not normally burn such waste may not begin to do so prior to certification of compliance.

We also note that, to achieve interim status as an incinerator, a BIF must generally have met the interim status eligibility requirements on July 23, 1981, the effective date of the incinerator standards in subpart O part 265. To achieve interim status as a thermal treatment unit, a BIF must generally have met the interim status eligibility requirements on July 5, 1985, the effective date of subpart P. BIFs could also be eligible for interim status as an incinerator or thermal treatment unit at later dates; however, to do so, the facility had to be burning waste newly regulated as hazardous waste and had to have met the "in existence" definition and other interim status eligibility requirements by the effective date for the newly regulated waste.

2. *HAFs Burning Low Heating Value Wastes as an Ingredient Prior to February 21, 1991 May Continue to Do So Prior to Certification of Compliance.* Halogen acid furnaces (HAFs) burn low heating value (i.e., less than 5,000 Btu/lb) halogen-bearing hazardous waste as an ingredient to produce halogen acid product. Heretofore, these wastes have been eligible for an exclusion from the definition of solid waste under § 261.2(e). In the BIF rule, however, EPA determined that these materials are inherently waste-like when fed to a HAF and listed these materials as solid waste. Thus, on the effective date of the BIF rule (i.e., August 21, 1991), these low heating value materials will become fully regulated hazardous waste rather than excluded secondary materials and, as the rule is currently drafted, HAFs could not burn such waste prior to certification of compliance. (See discussion above regarding requirements under the BIF rule for burning low heating value hazardous waste.)

In listing these materials as inherently waste-like, EPA did not intend to disrupt an on-going legitimate recycling operation. Rather, EPA wanted to ensure that HAFs burning these materials were subject to the emissions controls and permit requirements of the BIF rule. Consequently, EPA is correcting this unintended consequence of the rule by revising § 266.103(a)(6) to allow HAFs that were burning low heating value wastes as an ingredient prior to February 21, 1991 to continue to do so (after the effective date of the rule) prior to certification of compliance.

3. *Demonstration of Burning as an Ingredient or for Metals Recovery is Based on Evaluation of As-Fired, Not As-Generated, Waste.* The final rule establishes criteria for determining whether a waste is burned solely as an ingredient [3] or solely for metals recovery for purposes of eligibility for certain exemptions. In particular, the criteria apply limits on the heating value of the waste and the concentration of toxic compounds in the waste. EPA inadvertently wrote the final rule to apply these limits (in some cases) to the "as-generated" waste, rather than the "as-fired waste", thus effectively precluding pretreatment to destroy or remove toxic compounds. We believe such a limitation is unnecessary and may inhibit *bona fide* recycling activities. Therefore, today's amendments revise §§ 266.100(c) and 266.103(a)(5)(ii) to apply the limits to the as-fired waste provided that the waste is not treated by simply blending or other dilution to meet the limits.[4] (See, e.g., § 268.3 (general prohibition on dilution as a means of permissible treatment). We also are making a conforming change to the recordkeeping requirements to require the person claiming the exemption to document that the waste has not been impermissibly diluted to meet the as-fired limits, but rather, that if the waste has been pretreated, that toxics have been destroyed or removed.

4. *A BIF Correspondence File, Not the Operating Record, Must Be Made Available to the Public at the Facility Site.* By August 21, 1991, the final rule requires the owner or operator to make facility records available to the public. EPA inadvertently referred to the "operating" record as the record that must be made available at the facility site for public inspection. See § 266.103(b)(6)(viii). The rule also incorrectly referred to the record on the facility kept at the Agency Regional Office as the operating record rather than the administrative record.[5] (The Agency keeps an administrative record for each RCRA treatment, storage, and disposal facility that contains information similar to that required in the BIF correspondence file.)

The Agency did not intend for either the facility nor the EPA Regional Office to maintain for public inspection the operating record that would document minute by minute operations of the facility (e.g., minute by minute levels for CO, combustion chamber temperature, and air pollution control operating conditions).[6] Rather, EPA intended to require the owner/operator to provide public access to a record that includes all correspondence between the facility and EPA, State, and local regulatory agencies. This record is termed in today's amendments as the "BIF correspondence file." The BIF correspondence file must contain copies of all certifications and notifications, including, but not limited to, the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and State site visit reports submitted to the owner or operater.

5. *EPA May Approve on a Case-By-Case Basis the Use of Compliance Test Data from One Unit in Lieu of Testing a Similar On-Site Unit.* EPA is revising the interim status compliance testing requirements of § 266.103(c)(3) to clarify that compliance test data for one unit may be used in lieu of conducting a compliance test on a similar on-site unit upon written approval of the Director. To request approval to use compliance test data for one unit in lieu of testing a similar unit, the owner or operator must provide a comparison of the design, operation,[7] and maintenance of both the

[3] We use the phrase "burning solely as an ingredient" in the BIF rule to determine when certain regulatory restrictions on BIFs do not apply. The determination of when a waste is burned as an ingredient for purposes of the applicability of certain provisions of the BIF rule is much different from the determination that a material is not a solid waste under § 261.2(e) because it is used as an ingredient in an industrial process. Persons claiming that a material is not a solid waste under § 261.2(e) must make the demonstration required by § 261.2(f). See 56 FR 7185 (Feb. 21, 1991), 50 FR 638 (Jan. 4, 1985), and 53 FR 522 (Jan. 8, 1988). Note further that, even if a solid waste is used as a *bona fide* ingredient to produce a product that is "used in a manner constituting disposal" (e.g., placed on the ground), the waste is not eligible for the exclusion. See § 261.2(c)(1)(i)(B).

[4] Note that any treatment or pretreatment of a hazardous waste is subject to the appropriate RCRA regulation.

[5] We note that the Agency administrative record will be made available subject to Agency regulations on freedom of information and access to confidential business information.

[6] Owners and operators must nonetheless comply with the operating record requirements of § 264.73 for permitted facilities, and § 265.73 for interim status facilities.

[7] In particular, CO data from both units should be provided when they are operated under "identical"

Continued

tested unit and the similar unit as well as a description of the hazardous waste to be burned in both units. The Director will provide a written approval if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the compliance test is adequate to document compliance with the applicable emissions standards of §§ 266.104(b) through (f), and 266.105 through 266.107 and to establish the operating conditions specified by § 266.103(c)(1).

If the owner or operator would normally test both units during the same testing program absent a waiver of the compliance test for a similar unit, he/she should request tentative approval [8] to waive compliance testing for the similar unit well in advance of the planned test to allow sufficient time for EPA review and approval (or disapproval). Ordinarily, EPA will not be able to make such determinations unless a request, including complete supporting documentation and the notification of compliance test information required by § 266.103(c)(2), is submitted at least 60 to 90 days prior to the planned date of the compliance test.

We are limiting eligibility for the compliance test waiver to similar on-site units because of the burden on EPA and the States during the interim status phase of operations to review documentation (and, most likely, visit the facilities) on units at different sites (in, perhaps, different States or EPA Regions). The interim status standards have been designed to be generally self-implementing. Although certain provisions such as the one discussed here require significant EPA and State involvement, we want to keep that interaction to a minimum during the interim status phase of a facility's operation. Under the permit proceeding, however, where EPA and the States conduct a comprehensive and intensive review of the facility's operations, owners and operators may propose to use emissions data from any similar unit (i.e., not just on-site units) in lieu of the trial burn.

6. *A BIF Has Received the Known Final Volume of Hazardous Waste under Interim Status when It Misses a Certification Deadline.* EPA is revising the requirements under § 266.103(e) in the event of noncompliance with the interim status certification schedule to make it clear that, if a certification deadline is missed, the facility has received "the known final volume of hazardous waste" on the date the deadline is missed because the facility may no longer burn hazardous waste under interim status. In addition, the Agency is revising the closure requirements of §§ 265.112(d)(2) and 265.113(a) and (b) to correct and simplify them to require that a BIF: (1) Begin closure within 30 days of missing a certification deadline or otherwise receiving the known final volume of hazardous waste; (2) treat, remove from the unit or facility or dispose of on-site, all hazardous wastes in accordance with the approved closure plan within 90 days after missing a certification deadline or otherwise receiving the known final volume of hazardous waste; and (3) complete partial or final closure activities in accordance with the approved closure plan within 180 days of missing a certification deadline or otherwise receiving the known final volume of hazardous waste, or 180 days after approval of the closure plan, if that is later.

Section 265.112(d)(2) and 265.113(a) and (b) as published at 56 FR 7207–8 incorrectly implied that hazardous waste can no longer be burned (and, thus, closure must begin within 30 days) only when the certification of compliance was not submitted under deadlines established by the time extension provisions provided by § 266.103(c)(7)(i)(B) or (C). However, § 266.103(e) as published at 56 FR 7219 clearly requires that hazardous waste burning cease when any interim status certification deadline is missed. This includes certification of precompliance, certification of compliance (whether complying by August 21, 1992 or under a time extension), and periodic recertification. Therefore, we are correcting this inconsistency in today's technical amendment.

Finally, when we revised the existing closure regulations on February 21, 1991 to address BIFs, we inadvertently deleted existing § 265.112(d)(2)(ii) and language in §§ 265.113(a) and (b) that addressed facilities handling nonhazardous waste. Consequently, we are today reinstating that regulatory language.

7. *Feedstreams May Be Analyzed Using Methods That Meet or Exceed the Method Performance Capabilities of SW–846 Methods.* EPA is revising §§ 266.100(c)(1)(ii) and 266.102(b)(1) to allow the use of methods to characterize the physical or chemical properties of feedstreams other than those prescribed by *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,* SW–846, provided that the alternative methods meet or exceed the SW–846 method performance capabilities. The Agency has received several comments that the SW–846 method detection limits cannot be achieved when analyzing certain feedstream matrices using SW–846 procedures. Owners and operators must clearly note the use of alternative methods in the certification of precompliance, the notification of compliance testing and test protocol, the certification of compliance, and recertification of compliance. The Director may reject the use of an alternative method because, at his/her sole discretion, it may not meet or exceed the SW–846 performance capabilities.

8. *Methods Are Recommended for Determining Chlorine Levels in Feedstreams and the Heating Value of Solid Feedstreams.* EPA realized after publication of the final rule that *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,* SW–846, third edition, does not include methods for determining total chlorine levels in feedstreams or heating values of solid feedstreams. Until methods for chlorine and the heating value of solids are finalized and included in SW–846, EPA recommends the following methods. EPA currently recommends that owners and operators of hazardous waste incinerators use these methods to comply with the requirements of subpart O of parts 264 and 265.[9]

Total chlorine may be determined by first combusting the sample according to proposed SW–846, Method 5050 or the combustion step in ASTM D808,[10] followed by analyzing for chloride according to existing SW–846 methods 9250, 9251, 9252, or proposed SW–846 method 9253. The final gravimetric step described in ASTM D808 is not recommended because of poor sensitivity. An option for determining total chlorine in aqueous feedstreams is to analyze for both total organic halogens according to SW–846 methods 9020 or 9022, and inorganic chloride according to the methods listed above.

For heating value of solid feedstreams, EPA recommends use of the American Society of Testing and Materials methods D–2015–77, D–3286–

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conditions. (CO data from the "similar unit" may be obtained with a portable monitor.)

[8] The approval would be tentative pending a finding that the compliance test data were, in fact, sufficient to document compliance with the applicable emissions standards of §§ 266.104(b) through (f), and 266.105 through 266.107 and to establish the operating conditions specified by § 266.103(c)(1).

[9] See U.S. EPA, *Hazardous Waste Incineration Measurement Guidance Manual* EPA/625/6–89/021, June 1989.

[10] See "Annual Book of ASTM Standards", Philadelphia, Pennsylvania.

77, or D–808–81 prescribed in the "Annual Book of ASTM Standards", Philadelphia, Pennsylvania, or method A006 prescribed in "Sampling and Analysis Methods for Hazardous Waste Combustion", EPA 600/8–84–002, PB84–155845, February 1984.

To implement the use of these methods, EPA is revising §§ 266.100(c)(1)(ii) and 266.102(b) to require the owner or operator to use the best available method if SW–846 does not prescribe a method for a particular determination. EPA would expect that owners or operators would use the methods recommended above, or methods that meet or exceed the performance capabilities of the recommended methods. The Director may reject the use of an alternative method because, at his/her sole discretion, it may not meet or exceed the performance capabilities of the recommended methods.

9. *Certain Metal-Bearing Wastes Are Conditionally Exempt from the Demonstration of Burning Solely for Metal Recovery when Burned in a Metal Recovery Furnace.* The final rule conditionally defers regulation of smelting, melting, and refining furnaces that burn hazardous waste solely for legitimate metal recovery. See § 266.100(c) at 56 FR 7208. The rule provides three tests for the determination of burning solely for legitimate metal recovery. The heating value of the waste cannot exceed 5,000 Btu/lb (if so, the waste is considered to be burned partially for energy recovery), the concentration of appendix VIII organic constituents in the waste cannot exceed 500 ppm (if so, the waste is considered to be burned partially for destruction), and the waste must have recoverable levels of metal.

As we explained at 56 FR 7143, the Agency placed most of its efforts on issuing the mandated portion of the regulations (i.e., burning of hazardous waste fuels) as soon as possible, and has not resolved the questions of whether and how to regulate smelting furnaces under RCRA given the new air toxics provisions in the Clean Air Act Amendments of 1990. At the same time, however, EPA was concerned that the deferral not become a license or sham recycling activities or for operations motivated by conventional treatment objectives rather than recovery purposes. Consequently, the final rule established limits on the heating value and concentration of toxic organic constituents in a waste that is burned for metal recovery.

The secondary lead smelting industry and the secondary nickel-chromium smelting industry however, have informed EPA that the heating value and organic constituent test would inappropriately classify many waste (i.e., spent materials that are listed or that exhibit a characteristic, and byproducts and sludges that are listed in §§ 261.31 and 261.32—see § 261.2(c)(3)) as being burned partially for energy recovery or destruction when such lead, nickel, or chromium-bearing materials are typically processed in metal recovery furnaces (absent any impetus from RCRA).[11] Examples are spent lead acid battery parts that can contain pieces of plastic or rubber that raise the heating value above 5,000 Btu/lb, and baghouse bags used to capture metallic dusts (including recoverable levels of nickel and chromium) emitted by steel manufacturing that have a heating value above 5,000 Btu/lb. As discussed at proposal in the context of lead-bearing materials, we do not believe that such materials are burned either for sham recycling or for conventional treatment. See 54 FR at 43732 (Oct. 26, 1989).

Accordingly, EPA is revising the BIF rule to conditionally exclude certain hazardous wastes from the provisions of § 266.100(c)(2) published at 56 FR 7208. Those provisions are intended to identify when a waste is not processed solely for metal recovery (i.e, the 5,000 Btu/lb limit on heating value, and the 500 ppm limit on concentration of appendix VIII, part 261, toxic organic consitutuents). As discussed above, EPA believes that those criteria may not be appropriate to determine when certain wastes (i.e., a spent material that is listed or that exhibits a characteristic, or a listed sludge or by-product, see § 261.2(c)(3)) are burned in a furnace for metal recovery. Those wastes that are deemed to be burned for recovery of lead are listed in appendix XI to part 266 in today's amendments, which largely parallels the list proposed at 54 FR 43732. Those wastes that are deemed to be burned for recovery of nickel or chromium are listed in appendix XII to part 266. In addition, baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt when burned for metal recovery in any metal recovery furnace. Although baghouse bags may have a heating value exceeding 5,000 Btu/lb, they may have recoverable levels of metals and have historically been burned for metal recovery in a steelmaking or other furnace.

To ensure that the wastes listed in appendices XI and XII are, in fact, burned for metal recovery even though they may have a heating value exceeding 5,000 Btu/lb and may contain more than 500 ppm of toxic organic constituents, the exemption is conditioned on two requirements. First, the lead-bearing wastes must be generated or initially produced by the "lead industry" (except as discussed below) to help ensure that these wastes are normally burned in a lead smelter, and the nickel or chromium-bearing wastes must be generated by manufacturers or users of nickel, chromium, or iron (except as discussed below) to help ensure that these wastes are normally burned in a nickel-chromium recovery furnace. Today's amendment defines the lead industry as lead smelting operations (both primary and secondary), lead-acid battery manufacturing, and lead chemical manufacturing (i.e., producers of lead compounds). Second, if the waste contains more than 500 ppm of toxic organic constituents, it must not exhibit the Toxicity Characteristic (TC) of § 261.24 for an organic constituent and it must not be listed as a hazardous waste in subpart D of part 261 because it contains an organic constituent as identified in appendix VII of part 261.[12] This will help ensure that the waste is not burned partially for destruction of toxic organics. EPA believes that a waste on the exempt lists provided by appendices XI and XII, part 266, of the BIF rule that contains recoverable levels of lead or nickel-chromium is burned solely for metal recovery in a furnace even if it contains more than 500 ppm of

[11] See comments of RSR Corp., Dec. 26, 1989, pp. 8–14; comments of SLSA, Dec. 26, 1989; comments of Exide Corp., Dec. 22, 1989, pp. 1–5; correspondence from Robert N. Steinwurtzel, Esq., et. al., Andrews & Kurth, counsel for Association of Battery Recyclers, Inc., to Steven Silverman, Esq., EPA, May 21, 1991; correspondence from Robert N. Steinwurtzel, Esq., et. al., Andrews & Kurth, counsel for Association of Battery Recyclers, Inc. to Steven Silverman, Esq., EPA, July 1, 1991; correspondence from Robert N. Steinwurtzel, Esq., et. al., Andrews & Kurth, counsel for Association of Battery Recyclers, Inc. to Honorable William K. Reilly, EPA, July 1, 1991; correspondence from Neil Jay King, Esq., Wilmer, Cutler & Pickering, counsel for The International Metals Reclamation Company, Inc., to Richard Kinch, EPA, July 26, 1991; correspondence from William A. Sonntag, Jr. Esq., National Association of Metal Finishers, to Richard Kinch, EPA, July 27, 1991; correspondence from John L. Wittenborn, Esq., and William M. Guerry, Jr., Esq., Collier, Shannon & Scott, counsel for the Specialty Steel Industry of the United States, to Docket Clerk, EPA, July 29, 1991; and correspondence from John L. Wittenborn, Esq., and William M. Guerry, Jr., Esq., Collier, Shannon & Scott, counsel for the Steel Manufacturing Association, to Docket Clerk, EPA, July 29, 1991.

[12] We note that the restrictions that the waste cannot exhibit the TC for an organic constituent and cannot be listed for an organic constituent apply only to materials on appendices XI and XII that are exempt from the <5,000 Btu/lb and <500 ppm toxic organics tests. Those restrictions do not apply to other wastes burned by (exempt) smelters because those wastes are subject to the 500 ppm limit on toxic organic constituents.

toxic organics provided that the waste does not exhibit TC for an organic constituent and is not listed as hazardous for an organic constituent. The presence of toxic organics in a waste listed on appendices XI or XII is incidental to the decision to burn the waste for metal recovery.

Persons claiming that materials listed in appendices XI or XII meet the requirements of § 266.100(a)(3)(i–iii) and so are exempt from the 5,000 Btu/lb and 500 ppm toxic organics tests must retain for three years documentation supporting the claim, including data from sampling and analysis or other information. In addition, such persons must include in the one-time notice (see § 266.100(c)(3)) claiming that the metal recovery furnance is exempt from the requirements of §§ 266.102–266.111, a certification that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with the requirements of § 266.100(a)(3)(i–iii).

Most of the materials in appendix XI were proposed in the October, 1989 supplemental proposal, and consist of materials generated by, or initially produced by, lead-associated industries, i.e., lead smelters, lead-acid battery manufacturing, or lead chemical manufacturing. Examples are batteries and their component parts (i.e., plates and groups, grids, posts and separators, and casings), and process wastes from these industries. However, there are also certain lead-bearing materials that are legitimately recycled for metal value by secondary smelters that are not from lead related industries—lead-based paints, fluff from lead wire and cable casings, platen abrasive (from lead print linotyping), and spent jumper cables—which the agency is also including. (EPA notes, however, that all of these materials must actually contain recoverable amounts of lead to be deemed burned for metal recovery. See new § 266.100(c)(3).) Similarly, we have included in appendix XII a list of nickel or chromium-bearing materials that are legitimately recycled for metal value by nickel-chromium recovery furnaces that are not generated by manufacturers or users of nickel, chromium, or iron (e.g., electroplating wastewater treatment sludges, and nickel-cadmium and nickle-iron batteries).

In addition, we note that several lead-bearing materials that have been historically processed in lead recovery furnaces have not been included on the appendix XI list: By-product drosses, slurry and slurry screenings, slags, and scrap lead. We did not include these materials because they are either not solid wastes when recycled or are exempt from regulation when recycled. See §§ 261.2(c)(3) and 261.6(a)(3)(iv).

Finally, we note that the Agency may determine that a material on appendices XI or XII burned at a particular metal recovery furnace may have levels of toxic organic constituents substantially higher than a total of 500 ppm. (The Agency could make this determination because owners and operators claiming the exemption must notify the Agency. The Agency may then obtain waste analysis data or other information from the facility record or from EPA sampling that indicates the presence of high levels of toxic organic constituents.) The amended rule enables the Agency to determine on a case-by-case basis that the material may pose a hazard to human health and the environment when burned in a metal recovery furnace due to presence of toxic organic constituents at levels exceeding a total of 500 ppm, and to order that the burning either cease or be conducted in compliance with the BIF rule. The Agency is adopting this extra safeguard even though the rule already provides that, to be exempt from the <5,000 Btu/lb and <500 ppm toxic organic tests, the material cannot be listed for a toxic organic constituent or fail the Toxicity Characteristic (TC) for a toxic organic constituent. The waste might still contain high levels of toxic organic constituents that are not included in the TC or the material's matrix may not readily leach toxic organic constituents during the TC extraction procedure but would be liberated during burning in the furnace. In making the determination, EPA would consider the concentration and toxicity of toxic organic constituents in the material, the level of destruction of toxic organic constituents provided by the furnace, and whether the acceptable ambient levels established in appendices IV and V of part 266 maybe exceeded for any toxic organic compound that may be emitted (i.e., including products of incomplete combustion) based on dispersion modeling to predict the maximum annual average off-site (unless a person resides on-site) ground level concentration.

Should the Director determine that burning particular wastes with organic contaminants in a metal recovery furnace poses a hazard to human health and the environment, as explained above, the Agency would issue a notice to the company burning the waste indicating the basis for this tentative determination. The company would have an opportunity to respond to the determination but could not burn the waste in the interim. The Director would then make a final determination and document the basis for his conclusion. If the conclusion is that the waste would pose a hazard, then further burning would be illegal unless performed in compliance with the BIF rules. (It also may be possible to pretreat the waste to remove or destroy organics, and then burn it safely.) The determination would only apply to subsequent burning, however. There would be no enforcement penalties for burning occurring before the Director's tentative determination.

10. *Precious Metal Recovery Furnaces Engaged in Legitimate Metal Recovery Are Not Regulated by the BIF Rule.* EPA has been asked about the regulatory status of precious metal recovery operations under the BIF rules. Such operations are generally exempt from subtitle C regulation (with the exception of certain tracking and recordkeeping requirements). See 40 CFR part 266, subpart F and 50 FR at 648 (Jan. 4, 1985). This is because the value of precious metal in the wastes provides a strong incentive for proper handling. *Id.* (In addition, land disposal of the wastes is prohibited under part 268.)

EPA interprets this exemption as continuing to apply so that industrial furnaces [13] engaged in legitimate precious metal recovery operations are not subject to regulation under the BIF rule. Not only does the text of § 266.70 support this result, but the rationale for the exemption still holds. The value of the precious metals ensures proper handling not only before recycling, but during the recycling process. Recovery of particulate matter from air emissions is in fact typically maximized in the metal recovery process due to the value of these metals. EPA also notes that the technical provisions of the BIF rule may not be applicable to the precious metal recovery process. Initial thermal oxidation of materials normally must be done slowly at relatively low temperatures in order not to drive the precious metals off in flue gas. Combustion at the 1800 °F temperature specified in the rule for interim status facilities (see § 266.103(a)(5) for furnaces that feed hazardous waste at locations other than the "hot end") would be self-defeating. (Precious metal furnaces are, however, typically equipped with afterburners and secondary combustion chambers to destroy any pyrolyzed organics and to assist in further recovering precious metals.)

[13] That is, smelting, melting, and refining furnaces including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces.

In order to clarify that the exemption in part 266, subpart F, continues to apply, EPA is adding a conforming amendment to § 266.100(f) (applicability of BIF rule) to indicate that legitimate precious metal recovery operations are not subject to the rule. The Agency indicated in the January 4, 1985 solid waste definition regulations some of the indicia of legitimate precious metal recovery operations. See 50 FR at 648–49. These include presence of economically significant amounts of precious metals, efficient recovery operations, no land disposal of wastes destined for recovery, and payment by the reclaimer to the waste's generator. Industry members indicate further that materials destined for precious metal reclamation are normally batch segregated into distinct and identified batches of like material, that generators and recovery facilities normally enter into written contracts before materials are transferred specifying compensation to the generator and when transfer is to occur, and that true precious metal recovery is characterized by net financial return to the generator (i.e., a price sufficient to cover all charges for transport, storage, and processing).[14] Presence of air pollution control equipment to recover any precious metals contained in emissions would be a further indication of a legitimate operation. Conversely, the absence of one or more of these features could serve as potential indications of a sham recycling operation, which would, of course, be subject not only to the BIF rules but to all other subtitle C provisions as well. See 50 FR at 649. Furthermore, under § 261.2(f), persons ostensibly engaged in precious metal reclamation of hazardous wastes have the burden of proving (normally through recordkeeping plus presence of appropriate recovery equipment) that they are engaged in legitimate recovery activities. We have added a recordkeeping requirement to § 266.100(f)(3) to ensure existence of proper documentation.

11. *Records Must Be Kept Until Closure.* In the final rule published on February 21, 1991, EPA inadvertently provided conflicting requirements for the length of time that monitoring, testing, and other information that must be included in the operating record must be retained. As intended, the final rule required BIFs to comply with the recordkeeping requirements of §§ 264.73(b) for permitted facilities and 265.73(b) for interim status facilities that are applicable to other hazardous waste treatment, storage, and disposal facilities: records must be kept until closure of the facility. See §§ 266.102(a)(2)(v) and 266.103(a)(4)(v) at 56 FR 7209 and 7213. However, the final rule also provided conflicting provisions that required facilities to retain records for only three years. See §§ 266.102(e)(10) (permitted facilities), 266.103(k) (interim status facilities), and 266.112(c) (Bevill-excluded residues) at 56 FR 7212, 7220, and 7228, respectively. Those paragraphs are revised by today's amendments to require that records be kept until closure of the facility.[15]

12. *BIFs Must Comply with Operating Conditions and Emissions Standards upon Certification of Compliance.* The final rule requires owners and operators to establish in a certification of compliance limits on specific operating parameters based on the compliance test and to operate under those limits during the remainder of interim status (unless a revised certification of compliance is submitted to the Director). See § 266.103(c) at 56 FR 7216. Although the rule specifies that the owner or operator must conduct a compliance test to document compliance with the emissions standards of §§ 266.104 (b) through (e), 266.105, 266.106, 266.107, and 266.103(a)(5)(i)(D) [16], EPA inadvertently did not specify that, upon certification of compliance, the facility must remain in compliance with those emissions standards while hazardous waste remains in the unit. EPA intended that the facility must be operated in compliance with both the operating limits established upon certification of compliance and those emissions standards. (No other result makes any sense.) Today's amendments revise § 266.103(c)(1) accordingly.

13. *Sample Compositing Procedures Are Clarified and the Statistical Test Is Revised for Bevill Residues.* The final rule establishes a test to determine whether hazardous waste has significantly affected the character of certain residues, which would make them ineligible for exclusion from regulation. See § 266.112. EPA realized after promulgation of the final rule that the required sampling procedures for both normal residues and waste-derived residues were not clear, and that the statistical test established for comparing waste-derived residues to normal residues was inappropriate for the intended purpose. Therefore, today's amendments clarify the sampling procedures and establish a more appropriate statistical test for comparing waste-derived residues to normal residues.

First, § 266.112(b)(1)(i) is revised to make it clear that normal residues—that is, residues generated when not burning hazardous waste—are to be characterized by analysis of a minimum of 10 samples representing a minimum of 10 days of operation.[17] Composite samples may be used to develop a sample for analysis; however, the compositing period may not exceed 24 hours. In addition, §§ 266.112(b)(1)(ii) and 266.112(b)(2)(iii) are revised to clarify that the waste-derived residue must be sampled and analyzed as often as necessary to determine whether the residue during each 24-hour period has concentrations of toxic constituents that are higher than in the normal residue.[18] The waste-derived residue must be characterized by analyzing one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours.[19] If more than one

[14] See correspondence from John C. Bullock, Handy & Harman, to J. Robert Holloway, EPA, July 16, 1991; and correspondence from John C. Bullock, Esq. to Steven Silverman, July 19, 1991 and attachments.

[15] We note that the final rule continues to require that exempt facilities (e.g., smelters, small quantity burners) retain records for only three years. See §§ 266.100(c)(1)(i) and 266.108(e) at 56 FR 7208 and 7225. EPA believes that three years of records is adequate to implement and enforce the rules for exempt facilities given the low level of hazard they pose to public health and the environment. In addition, we note that §§ 264.73(b)(5) and 265.73(b)(5) require that records and results of inspections need be kept only three years.

[16] See § 266.103(c), introductory paragraph.

[17] We note that the normal residue need not be sampled over 10 consecutive days. In addition, sampling and analysis data characterizing normal residue from one unit may be used to characterize residue from a similar unit provided that the owner or operator retains adequate supporting documentation that the residues are similar (e.g., including documentation of concentrations of toxic constituents in feedstocks, feed rate of feedstocks, and combustion conditions and operating parameters of air pollution control systems that can affect levels of toxic constituents in residue). See 54 FR 43735 (October 26, 1989). Finally, the normal residue must be recharacterized whenever changes in feedstocks or operating conditions could significantly lower the concentration of toxic constituents in the normal residue. See 56 FR 7198 (February 21, 1991).

[18] Note that the sampling frequency is not specified. Waste-derived residue must be sampled and analyzed as often as necessary for the owner or operator to determine whether the residue is excluded or fully regulated hazardous waste. If the waste-derived residue is sampled and analyzed less often than on a daily basis, however, and subsequent analysis determines that the residue fails the test and is fully regulated hazardous waste, the Agency considers all residue generated since the previous successful analysis to be fully regulated hazardous waste absent documentation otherwise.

[19] The Agency considered whether the averaging period for waste-derived residue should be longer

Continued

sample is analyzed to characterize the waste-derived residue generated over a 24-hour period, the concentration for each constituent is the arithmetic mean of the values. (Today's amendments also make conforming revisions to section 7.0 of appendix IX, part 266, *Methods Manual for Compliance with the BIF Regulations.*)

Second, the Agency is revising the statistical test for normal residue established in the final rule which called for the determination of a 95% confidence interval about the mean for each constituent of concern based on a minimum of 10 samples. The value at the upper 95% confidence interval was to be compared to the levels in waste-derived residue. If the concentration of a toxic constituent of concern (see § 266.112(b)(1)) is higher in the waste-derived residue than the normal residue, the residue has failed part one of the Bevill test.[20]

Upon further consideration, EPA realizes that establishing a confidence interval about the mean is a useful statistical test when the mean of a data set of values is compared to the mean of a second data set of n values. In other words, this test would be appropriate if the mean of the concentrations in normal residue were to be compared to the mean of the concentrations in the waste-derived residue. However, the waste-derived residue must be characterized over a period of time not to exceed 24 hours, and the concentration of constituents of concern in each 24-hour "batch" of residue that is characterized must not exceed the levels in the normal residue. Thus, a single value (i.e., a 24-hours worth) for waste-derived residue is being compared to a range of values (i.e., a minimum of 10 days worth) for normal residues. The confidence interval about the mean addresses the expected variation in the mean, and not the variation in individual measurements.

EPA believes that a more appropriate statistical test for comparison of a single values (characterizing waste-derived residue) to a normal distribution of values (characterizing normal residue) is to establish an upper tolerance limit at 95% confidence with a 95% proportion for the concentrations of constituents of concern in normal residue. This means that, based on the (minimum of 10) samples of normal residue that are analyzed, we are 95% confident that 95% of the values for the normal residue will fall below the upper tolerance limit. Today's amendments revise § 266.112(b)(1)(i) to require this test and make conforming revisions to Section 7.0 of appendix IX, Part 266, *Methods Manual for Compliance with the BIF Regulations.* Establishing an upper tolerance limit accommodates the expected variation in individual measurements and, therefore, results in a higher threshold value than using the confidence interval approach. Thus, the upper tolerance limit approach will better accommodate normal sample variation and will reduce the incidence of false positives (i.e., outlying test results above the threshold which indicate an unaffected residue is affected by the hazardous waste). If a facility believes that this test has resulted in a false positive (i.e., has incorrectly indicated that an unaffected residue is affected by the hazardous waste), it has the option of analyzing additional samples obtained during the 24-hours of operations in question and averaging the values to support its claim.[21]

14. *Restrictions on Hazardous Waste Firing Rate Are on a Mass or Heating Value Basis, whichever Results in a Lower Mass of Waste Fired.* The final rule resticts the hazardous waste firing rate as a requisite for several exemptions. Small quantity burners cannot feed hazardous waste at any time at a rate the exceeds 1% of the burners fuel requirements. See § 266.108. Facilities complying with the low risk waste exemption and boilers complying with the waiver of the DRE trial burn must burn a minimum of 50% "primary fuel" that is fossil fuel or the equivalent. See §§ 266.109(a)(1)(i) and 266.110(a). In addition, coal-fired boilers must burn at least 50% coal in order for their residues to be eligible for the Bevill exclusion. See § 266.112(a)(1).

EPA inadvertently established these firing rate limits on different, and, in some cases, inappropriate bases. For small quantity burners, the final rule limited the hazardous waste firing rate to 1% of the total fuel requirements on a volume basis. For the low risk waste exemption and the waiver of the DRE trial burn, the final rule required that the primary fuel must be fired at a 50% firing rate on a total heat or volume input basis, whichever results in the larger volume of primary fuel fired. To be eligible for the exclusion of residues, the final rule required that at least 50% of the heat input to the boiler must be provided by the coal.

To apply the firing rates consistently and to ensure that the maximum amount of primary fuel is fired on a mass basis (which, in turn, ensures that the minimum amount of hazardous waste is fired on a mass basis), today's amendments revise those provisions of the regulation to base the firing rate on the total heat input or mass input, whichever results in the lower mass feed rate of hazardous waste. This will ensure, for example, that large quantities of low heating value hazardous waste cannot be burned under the restrictions.

15. *Direct Transfer Operations May Comply with the Setback Requirements for Tanks in the NFPA code rather than the 50 Foot Setback Requirement for Containers.* Section 266.111(d)(2) of the final rule requires direct transfer "containers" (i.e., transport vehicles) to meet most of the interim status container storage requirements. Among the applicable part 265 requirements is § 265.176 which requires that "containers" holding ignitable wastes be located at least 50 feet from the property boundary. The comparable requirement for storage (interim status) of ignitable waste in tanks, however, specifies only that the tank's location must meet the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code." See § 265.198. Since the only purpose for the setback requirement is fire safety, EPA believes that it would be reasonable to apply the more flexible NFPA code. A certification by the local Fire Marshall that the installation meets the applicable codes should be sufficient to verify that the location is reasonably safe. Consequently, today's amendments revise § 266.111(d)(2) to allow a facility

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than 24 hours given the variability of metals in raw material feedstocks. However, we believe that allowing the facility to characterize a 24-hour generation of waste-derived residue without limiting the number of samples that can be used to form a composite for analysis (and without limiting the number of analyses) provides a reasonable and fair characterization of that residue. Moreover, enforcement of the regulations would be difficult if a longer averaging period was used because enforcement officials would have to sample the residue over the entire averaging period.

[20] To lose the Bevill exclusion because hazardous waste has significantly affected the character of the residue, the waste-derived residue must have a toxic constituent of concern at a higher concentration than the normal residue *and* the constituent must be present at a level of potential health significance. See § 266.112(b)(2), which is part two of the test.

[21] To reduce the number of false positives, the Agency considered establishing the test at a 99% proportion of the sample distribution—i.e., the upper tolerance limit would be set at a level where we are 95% confident that 99% of future values are lower than that level. However, we did not select a higher proportion value because it would result in a higher rate of false negatives—i.e., waste-derived residue that has, in fact, been affected by the hazardous waste would be considered to be unaffected. In addition, as discussed in the text, the owner or operator may analyze additional samples of the waste-derived residue characterizing a day's generation to minimize the incidence of false positives.

to comply with § 265.198 in lieu of § 265.176.

16. *Furnaces May Feed Hazardous Wastes at Locations where Fuels Are Normally Fired without Complying with the Special Requirements of § 266.103(a)(5).* EPA was concerned that the interim status standards to control organic emissions (i.e., the carbon monoxide (CO) limits and, where applicable, controls on hydrocarbons (HC) and dioxins and furans) may not be protective when hazardous waste is fed at locations in an industrial furnace other than the hot zone. See 56 FR 7158. In particular, we were concerned about feeding hazardous waste in cement kilns at locations other than the hot end (i.e., the lower, clinker discharge end where atomized liquid or pulverized solid fuels are fired). Accordingly, the final rule provided special requirements on industrial furnaces that feed hazardous waste at any location other than the "hot end where products are normally discharged and where fuels are normally fired". See § 266.103(a)(5).

This wording of the applicability of the special requirements has the unintended consequence of applying the special restrictions to halogen acid furnaces (HAFs) (and perhaps other furnaces) that feed hazardous waste where fuels are normally fired but that discharge products at another location. HAFs are essentially designed like a boiler or incinerator where hazardous waste is burned in a combustion zone and halogen-rich combustion gases are processed to produce halogen acid product. EPA believes that the interim status standards (e.g., CO limits) will effectively control organic emissions from these devices without the need for the special restrictions. Consequently, EPA is today revising the applicability of the special restrictions to apply when hazardous waste is fed at any location other than the "hot end where products are normally discharged *or* where fuels are normally fired."

17. *F032 May Be Burned During Interim Status Even though It Is Listed for Containing Dioxin.* Because of the high toxicity of certain dioxin compounds, the final BIF rule requires that facilities demonstrate 99.9999% destruction and removal efficiency during the trial burn for enumerated dioxin-listed wastes in order to obtain an operating permit and prohibits the burning during interim status of "waste listed for dioxin or derived from any of the" enumerated wastes listed for dioxin. See §§ 266.104(a)(3) and 266.103(a)(3). The enumerated wastes are F020, F021, F022, F023, F026, and F027.

On December 6, 1990 prior to promulgation of the BIF rule on December 31, 1990, EPA listed F032, wood preserving waste as a "toxic" hazardous waste containing dioxin. Given new health effects data on hexachlorinated dioxins, however, the Agency considered F032 to be "toxic", but not "acutely toxic" like the other wastes previously listed for containing dioxins. See 55 FR 50466–67. However, the final BIF interim status requirements inadvertently prohibit the burning of F032 during interim status because the interim status restriction applies to "waste listed for dioxin" and not just to the enumerated dioxin-listed wastes.

Koppers Industries notified the Agency of this inconsistency and requested that the BIF rule be amended so that burning of F032 would not be prohibited during interim status.[22] EPA agrees with Koppers and, accordingly, is revising § 266.103(a)(3) to prohibit the burning during interim status of only those enumerated dioxin-listed waste (i.e., excluding F032).

18. *Certain Brominated Residuals Fed to a HAF Are Not Inherently Waste-Like.* The final rule classified as inherently waste-like (i.e., a solid waste) any secondary material that is identified or listed as a hazardous waste and that is fed to a halogen acid furnace (HAF). See § 261.2(d)(2), 56 FR 7206. The Agency's intent was to make sure that HAFs burning heavily chlorinated, low-energy still bottoms, most of which are covered by the F024 listing or by the related listings of wastes from manufacture of chlorinated aliphatic production, remain regulated when burned in HAFs. 55 FR at 17892 (April 27, 1990). These materials meet the inherently waste-like criteria because they contain high concentrations of chlorinated toxic organic constituents that are not normally found in raw materials used to produce chlorine. *Id.* These toxic constituents thus do not contribute to hydrochloric acid production, and one purpose of burning them in HAFs is to destroy these toxic organics. *Id.* (The Agency also intended that HAFs burning secondary materials containing high concentrations of other halogenated toxic organic constituents (e.g., brominated compounds) that are not normally found in raw materials to produce other halogen acids (e.g., HBr) to also be regulated under the BIF rule.)

It has come to the Agency's attention that at least some brominated process residuals exhibiting hazardous waste characteristics are processed on-site in HAFs as a source of bromine to produce HBr, and subsequently, brominated products. These process residuals contain high concentrations (more than 45%) of bromine, low concentrations (less than 1% total) of appendix VIII organic constituents, and are processed on-site as part of a continuous process (i.e., brominated residues are piped directly to a HAF without leaving the manufacturing process).

EPA is issuing a technical correction to indicate that such materials are not included as inherently waste-like. They do not readily meet the inherently waste-like criteria because they do not contain high concentrations of toxic constituents not ordinarily found in the raw materials for which they are substituting. Nor does the bromine recovery process appear to be motivated by waste treatment objectives because bromine concentrations are so high (minimum concentration of 45%), and toxic organic concentrations are low (less than 1% total). It is clear that the Agency did not have such materials in mind in promulgating the inherently waste-like classification for materials fed to HAFs.

Accordingly, the Agency is amending § 261.2(d) to indicate that the inherently waste-like designation does not apply to certain brominated residuals fed to HAFs. To prevent possible abuse, the materials would have to contain at least 45% bromine, less than 1% total appendix VIII toxic organic constituents, and be processed continually on-site in a HAF via direct conveyance (i.e., hard piping). Persons claiming that their brominated residuals meet the terms of this provision would have the burden of proving that the inherently waste-like designation for hazardous residuals fed to HAFs does not apply to them. See § 261.2(f).

B. Technical Corrections

On July 17, 1991, EPA published several technical corrections and amendments to the February 21 final rule. See 56 FR 32688. Today's notice corrects several errors published in that notice as well as several additional errors in the February 21 notice.

I. In rule document number 91–15398, beginning on page 32688 in the **Federal Register** published on Wednesday, July 17, 1991, make the following corrections:

PART 261—[AMENDED]

1. On page 32688, third columns, in the technical correction to part 261, remove the first correction. The amendatory

[22] Correspondence from John C. Chambers, Jr., Esq., McKenna & Cueno, Attorney for Koppers Industries, Inc., to Robert Holloway, EPA, August 8, 1991.

language will read as follows (as published at 56 FR 7206):

"2. Section 261.2 is amended by redesignating paragraph (d)(2) as (d)(3) and adding new paragraph (d)(2) to read as follows:"

2. On page 32689, third column, in line 2 of correction number 48, insert "(" between the words "a" and "before".

3. On page 32692, second column, in amendment 2 to part 261, change "§ 261.3(c)(2)(ii)(8)" to § 261.3(c)(2)(ii)(B)".

PART 266—[AMENDED]

§ 266.40 [Corrected]

4. On page 32692, third column, prior to amendment 2 to part 266, change "§ 266.4 [Amended]" to "§ 266.40[Amended]".

PART 270—[AMENDED]

§ 270.73 [Corrected]

5. On page 32692, first column, prior to the 103rd technical correction, change "§ 270.33 [Corrected]" to "§ 270.73 [Corrected]".

6. On page 32786, third column, in section 9.2, first bullet under paragraph "2", change "$\geq$0.95" to "$\leq$0.95".

7. On page 32786, third column, last sentence, change the sentence to read: "Then, for HCl, convert the chlorine emission rate to HCl by multiplying it by the ratio of the molecular weight of HCl to the molecular weight of Cl (i.e., 36.5/35.5)".

II. In rule document number 91–2667, beginning on page 7134 in the **Federal Register** published on February 21, 1991, make the following corrections:

1. On page 7210, third column, the numbers 1, 2, and 3 occurring in the last 4 lines should be italicized to denote subsections § 266.102(e)(4)(ii)(C)(*1*), (*2*) and (*3*) respectively.

2. On page 7211, first column, the numbers 1 and 2 of subsections § 266.102(e)(4)(iii)(c) (*1*) and (*2*) should be italicized.

3. On page 7213, second column, in § 266.103(a)(5)(i)(D), second line, change "(c)(7)(ii)" to "(c)(5)".

4. On page 7215, first column, in § 266.103(b)(5)(i)(A), add "and recorded" between "monitored" and "on".

List of Subjects in 40 CFR Parts 261, 265, and 266

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Recycling, Reporting and recordkeeping requirements, and Security measures.

Dated: August 16, 1991.

Don R. Clay,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR parts 261, 265, and 266 are amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

I. In part 261:

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.2 is amended by revising paragraph (d)(2) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(d) * * *

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

II. In part 265:

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. Section 265.112 is amended by revising paragraph (d)(2) to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes, or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 265.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

3. Section 265.113 is amended by revising the first sentence of the introductory text of paragraphs (a) and (b) to read as follows:

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of

nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. * * *

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

III. In part 266:

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

2. Section 266.100 is amended by revising the first sentence of paragraph (a), the introductory text of paragraph (c)(1), paragraphs (c)(1)(ii), (c)(2) (i) and (ii), and by adding paragraphs (c)(3) and (f) to read as follows:

§ 266.100 Applicability.

(a) The regulations of this subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this chapter) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), and (f) of this section. * * *

(c) * * *

(1) To be exempt from §§ 266.102 through 266.111, an owner or operator of a metal recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of paragraph (c)(3) of this section:

(i) * * *

(ii) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph under procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, incorporated by reference in § 260.11 of this chapter or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

* * * * *

(2) * * *

(i) The hazardous waste has a total concentration of organic compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (c)(1)(iii) of this section; or

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (c)(1)(iii) of this section.

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (c)(1) of this section. The owner or operator must comply with the requirements of paragraph (c)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph.

(i) The hazardous wastes listed in appendices XI and XII, part 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (c)(1) of this section, provided that:

(A) A waste listed in appendix XI must contain recoverable levels of lead, a waste listed in appendix XII must contain recoverable levels of nickel or chromium, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and

(B) The waste does not exhibit the Toxicity Characteristic of § 261.24 of this chapter for an organic constituent; and

(C) The waste is not a hazardous waste listed in subpart D of part 261 of this chapter because it is listed for an organic constituent as identified in appendix VII of part 261 of this chapter; and

(D) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of paragraph (c)(3) of this section and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph (c)(1)(ii) of this section and records to document compliance with paragraph (c)(3) of this section shall be kept for at least three years.

(ii) The Director may decide on a case-by-case basis that the toxic organic constituents in a material listed in appendix XI or XII of this part that contains a total concentration of more than 500 ppm toxic organic compounds listed in appendix VIII, part 261 of this chapter, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this subpart. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this subpart when burning that material. In making the hazard determination, the Director will consider the following factors:

(A) The concentration and toxicity of organic constituents in the material; and

(B) The level of destruction of toxic organic constituents provided by the furnace; and

(C) Whether the acceptable ambient levels established in appendices IV or V of this part may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

* * * * *

(f) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, paladium, irridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under this subpart, except for § 266.112. To be exempt from §§ 266.101 through 261.111, an owner or operator must:

(1) Provide a one-time written notice to the Director indicating the following:

(i) The owner or operator claims exemption under this paragraph;

(ii) The hazardous waste is burned for legitimate recovery of precious metal; and

(iii) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this paragraph; and

(2) Sample and analyze the hazardous waste as necessary to document that the waste is burned for recovery of economically significant amounts of precious metal using procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW–846, incorporated by reference in § 260.11 of this chapter or alternative methods that meet or exceed the SW–846 method performance capabilities. If SW–846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(3) Maintain at the facility for at least three years records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.

3. Section 266.102 is amended by revising the first two sentences of paragraph (b)(1) and revising paragraph (e)(10) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(b) *Hazardous waste analysis.* (1) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix VIII of part 261 of this chapter that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by analytical procedures prescribed by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference, see § 260.11 of this chapter). Alternative methods that meet or exceed the method performance capabilities of SW–846 methods may be used. If SW–846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method. * * *

* * * * *

(e) * * *

(10) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section until closure of the facility.

* * * * *

4. Section 266.103 is amended by revising paragraphs (a)(3), (a)(5) introductory text, (a)(5)(ii)(A), (a)(5)(ii)(B), (a)(6), (b)(6)(viii), (c)(1), (c)(3), (e), and (k) to read as follows:

§ 266.103 Interim status standards for burners.

(a) * * *

(3) *Prohibition on burning dioxin-listed wastes.* The following hazardous waste listed for dioxin and hazardous waste derived from any of these wastes may not be burned in a boiler or industrial furnace operating under interim status: F020, F021, F022, F023, F026, and F027. * * *

(5) *Special requirements for furnaces.* The following controls apply during interim status to industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see paragraph (a)(5)(ii) of this section) at any location other than the hot end where products are normally discharged or where fuels are normally fired:

* * * * *

(ii) * * *

(A) The hazardous waste has a total concentration of nonmetal compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as-generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the facility record; or

(B) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatement that removes or destroys organic constituents. Blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly blended must be retained in the facility record.

(6) *Restrictions on burning hazardous waste that is not a fuel.* Prior to certification of compliance under paragraph (c) of this section, owners and operators shall not feed hazardous waste that has a heating value less than 5,000 Btu/lb, as-generated, (except that the heating value of a waste as-generated may be increased to above the 5,000 Btu/lb limit by *bona fide* treatment; however, blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and records must be kept to document that impermissible blending has not occurred) in a boiler or industrial furnace, except that:

(i) Hazardous waste may be burned solely as an ingredient; or

(ii) Hazardous waste may be burned for purposes of compliance testing (or testing prior to compliance testing) for a total period of time not to exceed 720 hours; or

(iii) Such waste may be burned if the Director has documentation to show that, prior to August 21, 1991:

(A) The boiler or industrial furnace is operating under the interim status standards for incinerators provided by subpart O of part 265 of this chapter, or the interim status standards for thermal treatment units provided by subpart P of part 265 of this chapter; and

(B) The boiler or industrial furnace met the interim status eligibility requirements under § 270.70 of this chapter for subpart O or subpart P of part 265 of this chapter; and

(C) Hazardous waste with a heating value less than 5,000 Btu/lb was burned prior to that date; or

(iv) Such waste may be burned in a halogen acid furnace if the waste was burned as an excluded ingredient under § 261.2(e) of this chapter prior to February 21, 1991 and documentation is kept on file supporting this claim.

* * * * *

(b) * * *

(6) * * *

(viii) Locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

(A) The administrative record kept by the Agency office where the supporting documentation was submitted or another location designated by the Director; and

(B) The BIF correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the Director, state and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and State site visit reports submitted to the owner or operator.

* * * * *

(c) * * *

(1) *Limits on operating conditions.* The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in paragraph (c)(4)(iv) of this section) and include these limits with the certification of compliance. The boiler or industrial furnace must be operated in accordance with these operating limits and the applicable emissions standards of §§ 266.104 (b) through (e), 266.105, 266.106, 266.107, and 266.103(a)(5)(i)(D) at all times when there is hazardous waste in the unit.

* * * * *

(3) *Compliance testing.*—(i) *General.* Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under paragraph (b) of this section and under conditions established in the notification of compliance testing required by paragraph (c)(2) of this section. The owner or operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The Director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of § 266.103(c).

* * * * *

(e) *Noncompliance with certification schedule.* If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (b), (c), and (d) of this section, hazardous waste burning must terminate on the date that the deadline is missed, closure activities must begin under paragraph (l) of this section, and hazardous waste burning may not resume except under an operating permit issued under § 270.66 of this chapter. For purposes of compliance with the closure provisions of paragraph (l) of this section and §§ 265.112(d)(2) and 265.113 of this chapter the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

* * * * *

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section until closure of the boiler or industrial furnace unit.

* * * * *

5. Section 266.108 is amended by revising paragraph (a)(2) to read as follows:

§ 266.108 Small quantity on-site burner exemption.

(a) * * *

(1) * * *

(2) The maximum hazardous waste firing rate does not exceed at any time 1 percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input or mass input basis, whichever results in the lower mass feed rate of hazardous waste.

* * * * *

6. Section 266.109 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 266.109 Low risk waste exemption.

(a) * * *

(1) * * *

(i) A minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the Director on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

* * * * *

7. Section 266.110 is amended by revising paragraph (a) to read as follows:

§ 266.110 Waiver of DRE trial burn for boilers.

* * * * *

(a) A minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the Director on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

* * * * *

8. Section 266.111 is amended by revising paragraph (d)(2) to read as follows:

§ 266.111 Standards for direct transfer.

* * * * *

(d) * * *

(2) The use and management requirements of subpart I, part 265 of this chapter, except for §§ 265.170 and 265.174, and except that in lieu of the special requirements of § 265.176 for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code," (1977 or 1981), (incorporated by reference, see § 260.11). The owner or operator must obtain and keep on file at the facility a written certification by the local Fire Marshall that the installation meets the subject NFPA codes; and

* * * * *

9. Section 266.112 is amended by revising paragraphs (a)(1), (b)(1)(i), (b)(1)(ii), and (c) introductory text, and adding paragraph (b)(2)(iii) to read as follows:

§ 266.112 Regulation of residues.

* * * * *

(a) * * *

(1) *Boilers.* Boilers must burn at least 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

* * * * *

(b) * * *

(1) * * *

(i) *Normal residue.* Concentrations of toxic constituents of concern in normal residue shall be determined based on analyses of a minimum of 10 samples representing a minimum of 10 days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed 24 hours. The upper tolerance limit (at 95% confidence with a 95% proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically-derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically-derived concentrations of the toxic constituents of concern in the normal residue, the statistically-derived concentrations must be revised or statistically-derived concentrations of toxic constituents in normal residue must be established for a new mode of

operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Bevill Residue Determinations" in appendix IX of this part.

(ii) *Waste-derived residue.* Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under paragraph (b)(1)(i) of this section. If so, hazardous waste burning has significantly affected the residue and the residue shall not be excluded from the definition of a hazardous waste. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; or

(2) * * *

(iii) *Sampling and analysis.* Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the health-based levels. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; and

(c) Records sufficient to document compliance with the provisions of this section shall be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded.

* * * * *

10. Appendix IX to Part 266—Methods Manual for Compliance with the BIF Regulations is amended by revising Section 7.0 to read as follows:

Section 7.0

Statistical Methodology for Bevill Residue Determinations

This section describes the statistical comparison of waste-derived residue to normal residue for use in determining eligibility for the Bevill exemption under 40 CFR 266.112.

7.1 Comparison of Waste-Derived Residue to Normal Residue

To be eligible for the Bevill exclusion from the definition of hazardous waste under 40 CFR 266.112(b)(1), waste-derived residue must not contain Appendix VIII, Part 261, constituents that could reasonably be attributable to the hazardous waste (toxic constituents) at concentrations significantly higher than in residue generated without burning or processing hazardous waste (normal residue). Concentrations of toxic constituents in normal residue are determined based on analysis of a minimum of 10 samples representing a minimum of 10 days of operation. The statistically-derived concentrations in normal residue are determined as the upper tolerance limit (95% confidence with a 95% proportion of the sample distribution) of the normal residue concentrations. The upper tolerance limit is to be determined as described in Section 7.2 below. If changes in raw materials or fuels could lower the statistically-derived concentrations of toxic constituents of concern, the statistically-derived baseline must be re-established for any such mode of operation with the new raw material or fuel.

Concentrations of toxic constituents in waste-derived residue are determined based on the analysis of one or more samples collected over a compositing period of not more than 24 hours. Mulitple samples of the waste-derived residue may be analyzed or subsamples may be composited for analysis, provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize the waste-derived residue generated over a 24-hour period, the arithmetic mean of the concentrations must be used as the waste-derived concentration for each constituent.

The concentration of a toxic constituent in the waste-derived residue is not considered to be significantly higher than in the normal residue (i.e., the residue passes the Bevill test for that constituent) if the concentration in the waste-derived residue does not exceed the statistically-derived concentration.

7.2 Calculation of the Upper Tolerance Limit

The 95% confidence with 95% proportion of the sample distribution (upper tolerance limit) is calculated for a set of values assuming that the values are normally distributed. The upper tolerance limit is a one-sided calculation and is an appropriate statistical test for cases in which a single value (the waste-derived residue concentration) is compared to the distribution of a range of values (the minimum of 10 measurements of normal residue concentrations). The upper tolerance limit value is determined as follows:

$$UTL = X + (K)(S)$$

where X = mean of the normal residue concentrations, $X = X_i/n$,

K = coefficient for sample size n, 95% confidence and 95% proportion,

S = standard deviation of the normal residue concentrations,

$S = (\Sigma (X_i - X)^2/(n - 1))^{0.5}$, and

n = sample size.

The values of K at the 95% confidence and 95% proportion, and sample size n are given in Table 7.0-1.

For example, a normal residue test results in 10 samples with the following analytical results for toxic constituent A:

Sample No.	Concentration of constituent A (ppm)
1	10
2	10
3	15
4	10
5	7
6	12
7	10
8	16
9	15
10	10

The mean and the standard deviation of these measurements, calculated using the above equations, are 11.5 and 2.9, respectively. Assuming that the values are normally distributed, the upper tolerance limit (UTL) is given by:

$$UTL = 11.5 + (2.911)(2.9) = 19.9 \text{ ppm}$$

This, if the concentration of constituent A in the waste-derived residue is below 19.9 ppm, then the waste-derived residue is eligible for the Bevill exclusion for constituent A.

7.3 Normal Distribution Assumption

As noted in Section 7.2 above, this statistical approach (use of the upper tolerance limit) for calculation of the concentration in normal residue is based on the assumption that the concentration data are distributed normally. The Agency is aware that concentration data of this type may not always be distributed normally, particularly when concentrations are near the detection limits. There are a number of procedures that can be used to test the distribution of a data set. For example, the Shapiro-Wilk test, examination of a histogram or plot of the data on normal probability paper, and examination of the coefficient of skewness are methods that may be applicable, depending on the nature of the data (References 1 and 2).

If the concentration data are not adequately represented by a normal distribution, the data may be transformed to attain a near normal distribution. The Agency has found that concentration data, especially when near detection levels, often exhibit a lognormal distribution. The assumption of a lognormal distribution has been used in

various programs at EPA, such as in the Office of Solid Waste Land Disposal Restrictions program for determination of BDAT treatment standards. The transformed data may be tested for normality using the procedures identified above. If the transformed data are better represented by a normal distribution than the untransformed data, the transformed data should be used in determining the upper tolerance limit using the procedures in Section 7.2 above.

In all cases where the owner or operator wishes to use other than an assumption of normally distributed data or believes that use of an alternate statistical approach is appropriate to the specific data set, he/she must provide supporting rationale in the operating record that demonstrates that the data treatment is based upon sound statistical practice.

7.4 Nondetect Values

The Agency is developing guidance regarding the treatment of nondetect values (data where the concentration of the constituent being measured is below the lowest concentration for which the analytical method is valid) in carrying out the statistical determination described above. Until the guidance information is available, facilities may present their own approach to the handling of nondetect data points, but must provide supporting rationale in the operating record for consideration by the Director.

TABLE 7.0-1.—K VALUES FOR 95% CONFIDENCE AND 95% PROPORTION

Sample size (n)	K
10	2.911
11	2.815
12	2.736
13	2.670
14	2.614
15	2.566
16	2.523
17	2.486
18	2.458
19	2.423
20	2.396
21	2.371
22	2.350
23	2.329
24	2.303
25	2.292

7.5 References

1. Shapiro, S.S. and Wilk, M.B. (1965), "An Analysis of Variance Test for Normality (complete samples)," Biometrika, 52,591–611.

2. Bhattacharyya, G.K. and R.A. Johnson (1977), Statistical Concepts and Methods, John Wiley and Sons, New York.

* * * * *

11. Appendix XI to Part 266 is added to read as follows:

Appendix XI.—Lead-Bearing Materials That May be Processed in Exempt Lead Smelters

A. Exempt Lead-Bearing Materials When Generated or Originally Produced By Lead-Associated Industries [1]

Acid dump/fill solids
Sump mud
Materials from laboratory analyses
Acid filters
Baghouse bags
Clothing (e.g., coveralls, aprons, shoes, hats, gloves)
Sweepings
Air filter bags and cartridges
Respiratory cartridge filters
Shop abrasives
Stacking boards
Waste shipping containers (e.g., cartons, bags, drums, cardboard)
Paper hand towels
Wiping rags and sponges
Contaminated pallets
Water treatment sludges, filter cakes, residues, and solids
Emission control dusts, sludges, filter cakes, residues, and solids from lead-associated industries (e.g., K069 and D008 wastes)
Spent grids, posts, and separators
Spent batteries
Lead oxide and lead oxide residues
Lead plates and groups
Spent battery cases, covers, and vents
Pasting belts
Water filter media
Cheesecloth from pasting rollers
Pasting additive bags
Asphalt paving materials

[1] Lead-associated industries are lead smelters, lead-acid battery manufacturing, and lead chemical manufacturing (e.g., manufacturing of lead oxide or other lead compounds).

B. Exempt Lead-Bearing Materials When Generated or Originally Produced By Any Industry

Charging jumpers and clips
Platen abrasive
Fluff from lead wire and cable casings
Lead-based pigments and compounding pigment dust

12. Appendix XII to Part 266 is added to read as follows:

Appendix XII.—Nickel or Chromium-Bearing Materials that may be Processed in Exempt Nickel-Chromium Recovery Furnaces

A. Exempt Nickel or Chromium-Bearing Materials when Generated by Manufacturers or Users of Nickel, Chromium, or Iron

Baghouse bags
Raney nickel catalyst
Floor sweepings
Air filters
Electroplating bath filters
Wastewater filter media
Wood pallets
Disposable clothing (coveralls, aprons, hats, and gloves)
Laboratory samples and spent chemicals
Shipping containers and plastic liners from containers or vehicles used to transport nickel or chromium-containing wastes
Respirator cartridge filters
Paper hand towels

B. Exempt Nickel or Chromium-Bearing Materials when Generated by Any Industry

Electroplating wastewater treatment sludges (F006)
Nickel and/or chromium-containing solutions
Nickel, chromium, and iron catalysts
Nickel-cadmium and nickel-iron batteries
Filter cake from wet scrubber system water treatment plants in the specialty steel industry [1]
Filter cake from nickel-chromium alloy pickling operations [1]

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BILLING CODE 6560-50-M

[1] If a hazardous waste under an authorized State program.

federal register

Tuesday
August 27, 1991

Part V

The President

Proclamation 6326—National Campus Crime and Security Awareness Week, 1991

Federal Register
Vol. 56, No. 166
Tuesday, August 27, 1991

Presidential Documents

Title 3—

The President

Proclamation 6326 of August 22, 1991

National Campus Crime and Security Awareness Week, 1991

By the President of the United States of America

A Proclamation

If our Nation's schools are to be marked by excellence, they must offer students and teachers an environment that is conducive to learning. Accordingly, AMERICA 2000, our strategy to reinvigorate the Nation's educational system, calls for every school in the country to be safe, disciplined, and free of drugs and violence.

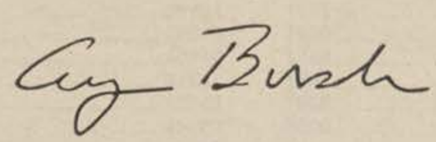
Surveys indicate that as much as 80 percent of all crimes committed at our Nation's institutions of higher learning are perpetrated by students, against students. The vast majority of these crimes are related to alcohol or drugs. Regardless of its source or nature, however, campus crime not only inflicts costly material losses but also causes untold personal suffering. Moreover, campus crime disrupts the vital functions of colleges and universities, thereby depriving students of an optimal educational experience.

Stopping theft, vandalism, sexual assault and other crimes on campus will require the sustained cooperation of students, administrators, and staff, as well as campus security personnel and law enforcement officials. Every academic community in America must increase its awareness of campus crime and ways to prevent it.

Last year, the Congress passed the "Student Right-to-Know and Campus Security Act," which requires colleges and universities to inform students and employees about campus crime statistics and campus security policies. By working together to achieve the goals set forth in this legislation, we will not only promote the safety of those who study and work at our Nation's institutions of higher learning but also provide our students with a valuable lesson in civic responsibility.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning September 1, 1991, as National Campus Crime and Security Awareness Week. I encourage all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of August, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



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